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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

12 CV 1422 (JSR)

6 BANK OF AMERICA CORPORATION,
7 *successor to Countrywide*
8 *Financial Corporation,*
9 *Countrywide Home Loans, Inc.,*
10 *and Full Spectrum Lending, et*
11 *al.,*

Defendants.

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New York, N.Y.
October 22, 2013
9:30 a.m.

13 Before:

14 HON. JED S. RAKOFF,

15 District Judge

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PREET BHARARA

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Southern District of New York

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1 (In open court; jury not present)

2 THE COURT: Ms. Nawaday, do you want to take a break
3 midway through your summation or not?

4 MS. NAWADAY: I would prefer not to, your Honor.

5 THE COURT: All right.

6 MR. ARMAND: There may be a microphone that goes with
7 the podium. I noticed it over there. Would it be possible to
8 put it on the podium?

9 THE COURT: That's the interpreter's microphone.

10 (Jury present)

11 THE COURT: Good morning, ladies and gentlemen. We
12 are now about to hear closing arguments of counsel. I want to
13 remind you, as I did before opening statements, that nothing
14 that counsel says is evidence. The evidence which is now fully
15 before you came from the witnesses, from the few exhibits, from
16 the stipulations that we occasionally had when the parties
17 agreed to a fact. There was also a few times when you were
18 read what are called legal admissions, formal admissions. That
19 is like a stipulation. Those are the only sources of evidence.

20 But now that the evidence is fully before you, it may
21 be useful for you to hear what each side believes the evidence
22 shows or fails to show. Obviously they are going to disagree
23 on what they think the evidence shows or fails to show, but it
24 may be useful to consider their arguments, their insights,
25 their perspective, before you undertake the job of forming your

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1 own opinions in this case.

2 Now, the whole day is going to be taken up with these
3 closing arguments. The government begins their allotted two
4 hours and 10 minutes. We'll then take a midmorning break. The
5 bank defendants are allotted two hours. They'll take one hour
6 before lunch and one hour after lunch. Then Ms. Mairone's
7 counsel will take an hour. And finally there will be a short
8 20 minute rebuttal from the government. So we have a full day
9 in front of us.

10 So let's begin with counsel from the government.

11 MS. NAWADAY: Thank you, your Honor.

12 Good morning, ladies and gentlemen. My name is Jaimie
13 Nawaday and I represent the United States.

14 After four weeks of evidence and testimony, this is
15 still a case about greed and lies. It is about people at
16 Countrywide saying to each other that their loan quality is in
17 the ditch, while telling Fannie Mae and Freddie Mac that their
18 loans are investment quality. It is about rolling out a new
19 business model called the Hustle, in the midst of a financial
20 crisis to make a quick profit at the expense of Fannie Mae and
21 Freddie Mac.

22 The Hustle was all about speed, lightning speed and
23 volume, and never about quality.

24 As we told you, the Hustle sidelined the underwriters
25 in favor of loan specialists, who were entry-level clerks

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Summation - Ms. Nawaday

1 pushed and paid and even ranked based on achieving funding
2 goals and speed goals. They weren't paid based on quality.
3 They weren't punished based on quality. And they weren't
4 ranked on quality.

5 In fact, when the reports on Hustle loans showed that
6 they were of terrible quality, the loan specialists stopped
7 being told about quality all together. Defendants saw quality
8 as a distraction from the goal of funding. Something that
9 slowed down the work of loan specialists.

10 So while Countrywide managers discussed the bad
11 quality reports among themselves, they told the loan
12 specialists to keep funding the loans.

13 As the defect rates on those loans rose higher and
14 higher, Countrywide managers set up funding contests for loan
15 specialists, pushing them to fund loans at lightning speed.
16 Funding contests, but not quality contests. They sold those
17 loans to Fannie Mae and Freddie Mac with lies that they were
18 investment quality loans. That's why we're here. That's what
19 we've shown, and that is fraud, ladies and gentlemen.

20 Mr. Armand promised you in his opening statement that
21 we would demonstrate the fraud, that we would demonstrate that
22 the Hustle was about speed and volume and not about quality,
23 that we would demonstrate that Hustle loans were sold with lies
24 about their quality. We've proven these facts. We made
25 promises to you and we kept them.

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Summation - Ms. Nawaday

1 How did we show you that the Hustle was all about
2 speed and volume? We showed you how the Hustle swapped out
3 underwriters for loan specialists, entry-level clerks with
4 little to no mortgage industry experience. We showed you the
5 Hustle turn time goal of 15 days. 15 days to move a loan from
6 application to funding. We showed you the funding goals of 30
7 loans per loan specialist per month or one loan a day. And we
8 showed you why the loan specialists were striving to hit these
9 goals, because they were pressured to hit them and they were
10 paid to hit them. But they weren't paid anything for quality.
11 And for six months their pay was never hit for bad quality.

12 And who is pushing for this? The chief operating
13 officer, Rebecca Mairone. And why did Countrywide push for
14 this model? Greed. Because Countrywide doesn't hold on to the
15 loans it makes. It originates them, and then it sells them.
16 And the more quickly it does this, the more quickly it gets
17 paid. So it unloaded Hustle loans as fast as possible to
18 Fannie Mae and Freddie Mac, the only major purchasers of
19 Countrywide loans in 2007 and 2008.

20 But Fannie Mae and Freddie Mac couldn't possibly
21 inspect all those loans before buying them. They rely on
22 lenders to inspect the loans, to underwrite them, and represent
23 that the loans are investment quality. In the case of Hustle
24 loan, those representations were lies and defendants knew it.

25 As we showed you, defendants knew the Hustle process

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Summation - Ms. Nawaday

1 would lead to poor quality loans. Employees told them so and
2 their own reports told them so. But Mairone and others at
3 Countrywide gave the direction to pursue profit instead. So
4 while warnings were raised, and bad quality reports rolled in,
5 defendants expanded the Hustle. They added volume and they
6 added riskier loans, and Mairone and others looked at the
7 production reports on those loans and said they were looking
8 fantastic.

9 Those reports show that they were hitting their speed
10 goals. But the quality reports told a different story. Week
11 after week, they showed defect rates on the loans climbing, at
12 one point to more than 90 percent. But defendants didn't want
13 to hear about those reports. The speed and the funding reports
14 looked too good. So they keep the focus on funding. They sent
15 out daily funding reports to hold loan specialists accountable
16 for production targets. Accountable for production targets,
17 but again, the quality reports were a different story. Those
18 stopped going out to loan specialists. They were called a
19 distraction. That's how we know this was about speed and
20 volume and not quality.

21 And although they claim they continued to track the
22 quality by each employee, we know that isn't true. We showed
23 you charts of loan specialists and other employees where
24 everyone was ranked on turn time and everyone one was ranked on
25 fundings. Remember what they showed on quality? On quality

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Summation - Ms. Nawaday

1 everyone was ranked number one.

2 The employee warnings and the quality assurance
3 reports were right in predicting disaster. Bad quality
4 assurance reports turned into bad quality control reports the
5 next quarter. They showed that the loans that went out the
6 door as investment quality loans to Fannie and Freddie had
7 material defect rates or severely unsatisfactory rates of
8 approximately 30 percent. According to Countrywide's own
9 reports, one out of every three loans they were selling to
10 Fannie and Freddie were not investment quality.

11 How did defendants respond? By starting contests to
12 fund more loans and contests to rebut defect findings. Quality
13 had become a joke.

14 The experts in this case confirmed that quality was a
15 joke. Our experts told that you more than 43 percent of the
16 loans sold to Fannie Mae and Freddie Mac were materially
17 defective and should never have been sold as investment
18 quality.

19 And what did the defense underwriting expert tell you
20 about the loans? Do you remember? He can't tell you anything
21 about the loans. He wasn't even allowed to really look at
22 them. His only job was to rebut the defect findings made by
23 our expert. You've heard something like that before.
24 Something that Countrywide did with high defect rates in 2008.
25 It was called the sprint incentive. Paying people to drive

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Summation - Ms. Nawaday

1 down defect rates. That's what they did in 2008 and that's
2 what they're doing today.

3 But this was no joke to Fannie Mae and Freddie Mac who
4 were lied to about the quality of the loans. And it was no
5 joke to borrowers who were given those loans for their homes.
6 Greed and lies have consequences.

7 And now that all the evidence has come in, this case
8 still comes down to a few simple facts. First, the Hustle
9 loans were bad. Second, the defendants knew the Hustle loans
10 were bad. And third, the defendants passed the Hustle loans
11 off as good loans anyway to cheat Fannie and Freddie out of
12 money. And we've proven those facts to you as promised.

13 Contrast the promises we made and the evidence that
14 supports them against the promises made to you by defense
15 counsel in their openings.

16 At the beginning of this case, defense counsel
17 promised that when you see the documents, and you hear the
18 witnesses, you would find the focus on quality and correcting
19 quality problems almost overwhelming. They also promised you
20 that everything Ms. Mairone did was the opposite of somebody
21 who wanted to sell bad loans to Fannie Mae and Freddie Mac.
22 These were bold promises, but they haven't kept them. The
23 evidence does not support them.

24 Ladies and gentlemen, this is my opportunity to review
25 some of the evidence that you've heard at trial. Before I go

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Summation - Ms. Nawaday

1 any further, I am going to give you a short roadmap of what
2 I'll be talking about this morning.

3 First I am going to go over briefly what the
4 government must prove. Second, I am going to review the
5 evidence you've heard and seen and how that evidence proves the
6 government's fraud claims. And while I go through the
7 evidence, I'll address some of the arguments I expect defense
8 counsel will raise in their summations.

9 So what does the government need to prove? We have
10 two identical fraud claims here. One against the bank
11 defendants and one against Ms. Mairone.

12 Now, Judge Rakoff is the one who tells you about the
13 law. So if I stumble and say something different from what
14 Judge Rakoff says, forget what I say. But we expect he is
15 going to instruct you that the government must prove three
16 elements on each of its claims.

17 First, that there was a scheme to defraud Fannie Mae
18 and Freddie Mac. Second, that the defendant at issue
19 participated in that scheme with knowledge of its fraudulent
20 nature and specific intent to defraud. And third, that the
21 defendant used the U.S. mail or an interstate wire, like a
22 telephone call or an e-mail, in furtherance of the fraud.

23 The government needs to prove its claims by a
24 preponderance of the evidence. That means that we have to show
25 you that it is more likely than not that the defendants

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Summation - Ms. Nawaday

1 committed fraud. And surely we have shown you that. So when
2 we're through, I will ask you to reach the only conclusion that
3 is consistent with the evidence, and return a verdict for the
4 United States.

5 Now let's go back to the summer of 2007 as the
6 financial crisis unfolded. You'll recall that Countrywide's
7 Full Spectrum Lending Division was looking to boost its
8 profits. Full Spectrum needed a quick boost of cash, and the
9 market was changing. Full Spectrum was moving from a subprime
10 business to a prime business. But that has never explained the
11 Hustle. Full Spectrum already had in place a model for
12 processing prime loans, and you heard about this. It was
13 called the prime CLUES accept work flow. You heard Michael
14 Thomas and Edward O'Donnell explain how it worked. It involved
15 underwriters in the process. Underwriters validated the
16 information put into CLUES, and underwriters cleared those
17 loans to close. And this process produced quality loans.

18 And throughout this trial, we never really heard
19 anything wrong with this work flow. What was wrong with the
20 prime CLUES accept work flow? We know what was wrong with it,
21 according to defendants. It just wasn't fast enough. That's
22 why they wanted the Hustle. They wanted more speed, and more
23 volume.

24 And you heard from Mr. Thomas that he was immediately
25 concerned about the Hustle model and he said so. He told you

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Summation - Ms. Nawaday

1 that he saw the tightening market. He read a company-wide
2 e-mail sent by Drew Gissinger, the president of Countrywide
3 Home Loans, that said rigorous underwriting discipline was
4 critical to the company's success. Mr. Thomas said this new
5 Hustle model would take them in the wrong direction.

6 Now let me show you DX 279. Mr. Thomas said that
7 they've been down this road before. He had seen other
8 processes like those in CMD and NCA designed without controls
9 and without quality checkpoint, and those processes led to bad
10 loans. He warned if FSL quality declines and we have the same
11 quality issues that CMD regional operating centers are having,
12 I don't think we'd want Drew to see this process design. And
13 he warned that NCA is a real-life example of what happens to
14 quality when we remove or reduce the current control points.
15 He sent his concerns to Mark Barnett and Anson Gong, engineers
16 you heard from who helped design the Hustle process.

17 What kind of process did these engineers design? One
18 for speed. Mr. Barnett told you that himself. This was his
19 design. Pushing loans through at high speed without hand offs
20 and without toll gates. Mr. Barnett told you about going to
21 CMD and studying their process. He created a presentation that
22 we saw on what he liked about the CMD model. Fewer hand offs,
23 less training required for each individual, faster turn time.

24 But what did he leave out of his presentation?
25 Quality. And Mr. Barnett talked about diagrams like this.

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Summation - Ms. Nawaday

1 Remember seeing these diagrams? He talked about this diagram
2 as evidence of something, though it's not clear what. What
3 does this chart tell us about quality? Nothing. And what did
4 Mr. Barnett know about quality? Nothing. He testified he had
5 no experience in underwriting. He had no experience in quality
6 control. He had no experience with the guidelines of Fannie
7 Mae and Freddie Mac. He had no experience in the mortgage
8 industry whatsoever. But Mr. Barnett didn't have to know
9 anything about quality to follow his mandate, did he? His
10 mandate was to design a process for speed.

11 And we told you about a cautionary tale from NCA,
12 another process designed for speed and managed by Rebecca
13 Mairone. It involved loan processors who are allowed to clear
14 loans to close. As you heard, those loan processors were given
15 funding quotas, one loan per day. As we showed you, we showed
16 you this e-mail involving Robert Price who said that the loan
17 processors were under pressure to hit numbers oftentimes before
18 they were allowed to leave, no matter what time it is. He said
19 that the pressure was driving loan processors to take shortcuts
20 and make poor decisions to hit numbers. What Mr. Price called
21 "shortcuts" really was just lies. A loan specialist saying she
22 reviewed a loan and cleared conditions when she hadn't.

23 And besides Michael Thomas and Ed O'Donnell, you heard
24 from Mr. Price and you heard from John Boland about their
25 concerns with loan specialists. All of these witnesses told

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Summation - Ms. Nawaday

1 you about the lack of experience that loan specialists had in
2 Full Spectrum. And he had told you that loan specialists were
3 outside of the underwriting and credit risk organizations.
4 Instead, they were on the production and operations side of the
5 company. And they told you that they warned that funding
6 pressures drove bad quality.

7 Did the defendants listen? No. They designed a model
8 that they knew was a recipe for disaster. They took away
9 underwriters, they gave underwriting authority to loan
10 specialists, and created a compensation plan to drive the loan
11 specialists toward volume and speed at the expense of quality.

12 The evidence showed that in August of 2007, loan
13 specialists had a turn time bonus rewarding them for moving
14 loans quickly. They also had a funding bonus rewarding them
15 for moving a lot of loans. But they had no quality bonus and
16 they had no quality penalty.

17 As you heard from Mr. Thomas, at an initial kickoff
18 meeting for the Hustle, the loan specialists raised concerns.
19 They raised concerns about whether they were up to their tasks.
20 And they asked Ms. Mairone how their pay would be affected if
21 they made mistakes. And as Mr. Thomas told you, Ms. Mairone
22 reassured them. But she didn't say we'll do all we can to
23 train you and prevent mistakes. She said their compensation
24 would not be hit for a few quality mistakes. And Ms. Mairone
25 ended up suspending that hit for a total of six months.

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Summation - Ms. Nawaday

1 Ms. Mairone didn't act alone in approving these
2 things. You heard a lot about a steering committee with the
3 Hustle. That the steering committee approved the Hustle. But
4 at the top of that steering committee, along with Ms. Mairone,
5 were Greg Lumsden, the president of Full Spectrum Lending, and
6 Cliff Kitashima, the chief credit officer. And together, these
7 three sold the Hustle as a pilot, as a test. So you heard that
8 Mr. O'Donnell signed on believing that if things didn't work,
9 adjustments would be made.

10 Even with NCA when things got bad, Mr. O'Donnell had
11 been able to step in and add checkpoints to address the poor
12 quality. But in fact, the Hustle was a test of one thing only,
13 and that was speed.

14 There were all sorts of reports on Hustle loans
15 showing average fundings per loan specialist, average turn time
16 per loan specialist, percentage of loans moved from application
17 to funding. And Countrywide and Ms. Mairone watched those
18 reports closely. They looked at what percentage of loans were
19 hitting the turn time goals of 15 days initially, and then 24
20 days, and you saw the funding goals and those reports of 30
21 loans per loan specialist per month.

22 And remember this e-mail from Mr. Barnett?
23 Mr. Barnett patted himself on the back to Ms. Mairone after the
24 Hustle started saying so you know we're not falling down on the
25 job here, we just got our first clear to close. One day.

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Summation - Ms. Nawaday

1 Why is he highlighting clear to close in one day? So
2 Ms. Mairone knows he's not falling down on the job. And what
3 was his job? To design a process for speed.

4 These were big changes. An entirely different
5 culture, a culture that focused only on speed and volume, but
6 not quality. So some employees spoke up. We showed you the
7 memo where Ed O'Donnell summarized feedback that he heard from
8 his senior vice presidents and sent it along to Ms. Mairone.
9 And Mr. O'Donnell said that the number one question he heard
10 was about quality. Does the freeze of quality of grade and the
11 request to move loans mean we no longer care about quality?
12 And what was Ms. Mairone's response? Sounds like it may work.
13 Sounds like it may work.

14 Why did she say that? Because, in fact, she and the
15 bank did not care about quality. They were going to roll out
16 this Hustle loan process no matter what.

17 (Continued on next page)

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Summation - Ms. Nawaday

1 MS. NAWADAY: You also heard about the Hustle culture
2 change from John Boland. He told you about Audrey Knabe, who
3 managed loan processors, and how Ms. Knabe asked him to approve
4 loan processors for underwriting authority for the Hustle. Do
5 you remember what Mr. Boland said about this? He basically
6 said I don't know who these people are. So how could he know
7 about the quality of their work? But he was told they're the
8 guys assigned to the Hustle thing, come on, work with me. How
9 did Mr. Boland say that he interpreted that? There was a new
10 culture and a new set of rules for the Hustle.

11 When the defense witnesses talked about the Hustle
12 pilot, they talked about how collaborative the process was.
13 You heard that word a lot, "collaborative," from Mr. Kitashima,
14 Mr. Barnett and Mr. Gong. But ask yourself, why did they use
15 that word so many times? Your common sense is the most
16 important asset that you bring to this process. You know when
17 somebody makes sense, and you know when somebody is trying to
18 hard to convince you of something that isn't true.

19 And while there were meetings about the Hustle that
20 included a lot of people, that doesn't mean that the process
21 was collaborative. Did the bank and Ms. Mairone listen and
22 respond to those who advocated controls? No. Because the
23 process was rigged.

24 And remember when we asked Mr. Barnett whether his
25 goal was to remove tollgates from processing loans? And he

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Summation - Ms. Nawaday

1 said no, that wasn't my goal. And then we put up this exhibit
2 that showed that in fact his goal was to minimize the number of
3 tollgates and push speed.

4 In fact, you recall that Mr. O'Donnell emailed him and
5 suggested having underwriters look at appraisals, saying they
6 could get them turned around in less than 24 hours. But
7 Mr. Barnett saw that delay as to counter to his goals. And
8 when we asked Mr. Barnett if he set funding goals for the
9 Hustle, he said no, I didn't set funding goals. Then we put up
10 this exhibit which shows his involvement in setting a funding
11 goal of 30 to 35 fundings per loan specialist per month.

12 So ask yourself, did Mr. Barnett just forget to
13 mention that he wanted to remove tollgates? Did he just forget
14 to mention the funding goals? No, he didn't forget. He didn't
15 want to tell you that part. He didn't want to admit that it
16 was all about funding, speed and volume.

17 Mr. Barnett dodged around on another issue as well.
18 He testified on direct examination by defense counsel that in
19 attending steering committee meetings he never heard anyone
20 express disagreement with proceeding with the Hustle pilot. He
21 never heard anyone express disagreement with expanding it to
22 Central Fulfillment. Do you remember that?

23 Then we asked him about this exhibit. At the end of
24 August, Mr. Barnett was having confidential conversations about
25 expanding the Hustle work into Central Fulfillment. And he

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Summation - Ms. Nawaday

1 said that this information might be considered by some to be
2 sensitive. But if everyone was so on board with the Hustle, if
3 this was such a great loan process, why was this information so
4 sensitive?

5 You already know the answer. Quality. The
6 information was sensitive because Ed O'Donnell and Michael
7 Thomas and others had expressed concerns about the pilot to
8 him, concerns about the quality of the loans the Hustle would
9 produce. Those concerns were based not only on what they had
10 seen in NCA, but on the very first quality assurance report.
11 That report, as we showed up, showed that more than 40 percent
12 of the Hustle loans were flagged as high risk. And
13 Mr. O'Donnell told you this was way above what he had seen in
14 the past. And he said that the 40 percent high risk finding
15 was a big problem because the pilot was supposed to be using
16 the most experienced loan specialists and the highest quality
17 loans.

18 So Mr. O'Donnell took these results to the steering
19 committee, and he took them in particular to Ms. Mairone and
20 Mr. Lumsden. And how did they react? Ms. Mairone asked who
21 the reports were being distributed to, and she attacked the
22 finding. She didn't want to hear that the process wasn't
23 working. She didn't want to hear that the loans were bad
24 quality. For Ms. Mairone, the pilot was never a test of
25 anything but speed. As Mr. Barnett told us in his email, the

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Summation - Ms. Nawaday

1 direction driven by Rebecca was that the Hustle teams would be
2 taking and keeping all loans. And as you heard, by early
3 October the Hustle expanded into what is called Central
4 Fulfillment.

5 In the face of this terrible quality results, loan
6 specialists were given more authority, and they were allowed to
7 process higher risk loans, like the stated income loans and the
8 expanded approval loans that you heard about which were more
9 like subprime loans. Expanded approval loans and stated income
10 loans were not the highest quality, lowest risk prime loans
11 that the Hustle was supposedly designed for, and defendants
12 knew that. Mr. O'Donnell told you that he said that these
13 loans should stay out of the Hustle, but they were added
14 anyway.

15 And we know who was in charge of Central Fulfillment
16 because we saw this chart many times during the trial, and
17 Ms. Mairone admitted on the stand that she knew that Central
18 Fulfillment loans were being sold to Fannie Mae and Freddie
19 Mac. She knew that those loans were sold with representations
20 that the loans were investment quality. The one thing she
21 wouldn't admit but we now know from the evidence is that she
22 knew that the representations about investment quality were
23 lies and the loans were very poor quality.

24 And you heard that Ms. Mairone, with Mr. Lumsden and
25 Mr. Kitashima, picked Wade Comeaux to manage Central

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Summation - Ms. Nawaday

1 Fulfillment. Mr. Comeaux was a sales guy, somebody who was
2 touted as bringing a true production perspective to Central
3 Fulfillment. And Mr. Comeaux certainly did live up to that,
4 pushing to fund, quote, a hell of a lot of loans in the fall of
5 2007. And even when quality assurance reports continued to
6 show high finding rates, 80 and 90 percent high risk findings,
7 Mr. Comeaux never took his eye off those production goals.

8 And defendants tried one excuse after another for
9 ignoring these quality assurance reports. One excuse was that
10 the reports just looked at loans prefunding at a point when
11 mistakes can be corrected. But then we showed you that the
12 quality assurance group tested loans in both the prefunding and
13 post funding stage. And what did it find? The vast majority
14 of mistakes were not being fixed. We saw that in an email from
15 Steve Brent to Ms. Mairone in November of 2007 telling
16 Ms. Mairone and Mr. Kitashima that only five percent of the
17 findings were being corrected. And in this email, Brent warned
18 this could create much higher SUS rates, severely
19 unsatisfactory rates.

20 And did Mairone listen? Did Ms. Mairone listen?
21 Let's look at what she said. Rather than respond to Mr. Brent,
22 Mairone suggests to Mr. Comeaux that they discuss the issue
23 offline. Now you heard testimony from Ms. Mairone that all she
24 ever wanted to do was improve the quality assurance process.
25 But if that's what she wanted to do, why did she ask for an

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Summation - Ms. Nawaday

1 offline discussion with Mr. Comeaux? Ask yourself what type of
2 discussion does a person typically take offline?

3 Were Mr. Brent's warnings heeded? No. What we see
4 from November 2007 is that quality was nothing more than a
5 distraction. You heard testimony from Ms. Mairone and
6 Mr. Kitashima that there supposedly was overcommunication about
7 quality assurance. And you saw an email from Scott Bridges,
8 another production guy, complaining that loan specialists were
9 getting pounded with quality reports. Concerns about quality
10 were distracting these loan specialists, supposedly, from
11 focusing on production. But no one seemed to be complaining
12 about overcommunication about production. As you saw during
13 Ms. Mairone's testimony, she sent out daily reports on funding
14 production, on funding projections, and she said the purpose of
15 those reports was to increase the accountability of the
16 operations teams for the forecasted fundings.

17 So at Countrywide it's OK to pound people with daily
18 reports when you want to hold them accountable for fundings but
19 not when you want to hold them accountable for quality. And
20 the low loan specialists were pounded about turn time.
21 Remember that email from November 2007 from defense witness Ron
22 Gillet? He set a new turn time goal for his team of five days
23 from the time the individual received the appraisal on a loan
24 to the time that loan cleared to close. And you might remember
25 what he said to his reports, because it was so colorful. You

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Summation - Ms. Nawaday

1 will be hearing from me, emails, meetings, checking and sending
2 notes. You can count on me to be on this like white on rice.

3 And it wasn't only the quality assurance group that
4 expressed concerns, you saw emails from others. You heard
5 testimony from John Boland and Robert Price about concerns
6 expressed to them that they passed along. And one email in
7 particular that they both received was this one from Neal
8 Ballance, who was an underwriting manager in Richardson.

9 And Mr. Ballance complained: It seems we're making up
10 for a loss in subprime by becoming overly aggressive, reckless
11 with prime. And haven't we already seen where this will go? I
12 recall the recent meltdown with NCA. Those branches were given
13 authority to clear almost everything. That resulted in branch
14 operation managers clearing to close files that were never
15 cleared, funding loans before they were approved by
16 underwriting, ignoring conditions, et cetera. I don't
17 understand. This mentality will eventually lead us down the
18 same road as subprime. When did erring on the side of caution
19 ever become a bad thing? How will investors and now, more than
20 ever, fed regulators react when they learn that total authority
21 for all aspects of a loan lies solely within a branch, a branch
22 run by only and responsible only to production management?
23 Time will tell.

24 When you read this email, I want you to remember the
25 defense counsel's promise. They said that when you see the

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Summation - Ms. Nawaday

1 documents and you hear the witnesses, you will find the focus
2 on quality and correcting quality problems almost overwhelming.
3 Ladies and gentlemen, do you find this overwhelming?

4 Defendants, of course, did not stop there. At
5 Mr. Lumsden's suggestion, Ms. Mairone agreed to lower base pay
6 so that their compensation would be more heavily dependent on
7 bonuses. And bonus pay, as we know, was based on volume and
8 speed but not quality.

9 And again, Ms. Mairone did not act alone in pushing
10 funding, we also heard from Greg Lumsden through his November
11 emails. And Mr. Lumsden said, as you heard, that if Full
12 Spectrum does not fund the volumes per its budget, it will not
13 have to worry about QA and QC. And Mr. Lumsden's point could
14 not be clearer: Forget about quality, just crank up
15 production. And you heard him say to hit their numbers they
16 should watch for and eliminate any distractions. What
17 distractions? Anything that slows down the production of
18 loans, like quality checkpoints and QA reports.

19 And Mr. Comeaux and Ms. Mairone were on board.
20 Mr. Comeaux, as you know, told his direct reports that they had
21 to, quote, take ownership of funding a hell of a lot more loans
22 in December.

23 And immediately after that, Ms. Mairone told her
24 reports that they needed to hit \$1.75 billion in fundings. She
25 sent that email on November 29. And we know what else

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Summation - Ms. Nawaday

1 Ms. Mairone did on November 29th because you heard plenty of
2 testimony about it. She ordered that all QA communication be
3 directed solely to her. She ordered that all QC communication
4 be directed solely to her. She suspended on-site reviews that
5 provided feedback about quality to loan specialists. She
6 eliminated mandatory checklists that guided those loan
7 specialists through their tasks, and she extended the Quality
8 of Grade reprieve.

9 There's no dispute that Ms. Mairone sent her email --
10 sent her November 29 email with the approval of Greg Lumsden
11 and Cliff Kitashima. In fact, she admitted that on the stand.
12 So why did Ms. Mairone support these changes? You can believe
13 her words then or you can believe her words now, because during
14 her testimony we went on a fantastical voyage between two
15 realities, what she said in the past and what she said on the
16 stand.

17 Back then Ms. Mairone declared that the purpose of
18 these changes is to immediately increase the focus on funding
19 loans and working the pipeline. And that makes sense because
20 each of the changes that she announced removed a distraction to
21 allow loans to be funded faster. You heard about how the QA
22 fundings supposedly slowed down the loan specialists who were
23 shown their mistakes. Defense counsel showed you an email from
24 Scott Bridges, the head of production, complaining about this.
25 So stopping the reports sped up production. You heard

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Summation - Ms. Nawaday

1 Mr. O'Donnell explain on-site reviews, the process of sitting
2 down with the loan specialist and teaching that person how to
3 do things correctly. But that teaching would distract loan
4 specialists from moving loans, so suspending the site reviews
5 sped up production.

6 And you heard Ms. Mairone testify that it took time to
7 complete these checklists and upload them into the loan files.
8 So Ms. Mairone eliminated a lot of those checklists, and that
9 sped up production. And finally, Ms. Mairone extended the free
10 pass for poor quality and announced that employees would no
11 longer even receive direct QA feedback until further notice.
12 What better way to send the message to keep driving towards
13 speed and volume?

14 Now Ms. Mairone says she took those actions to improve
15 the focus on quality and to be fair to employees learning new
16 roles, and she testified again and again that she thought the
17 changes she put in place would have either no affect on or
18 would in fact improve loan quality. Ask yourselves, does that
19 make any sense?

20 Let me give you a few examples. When asked what, if
21 any, effect minimizing hand offs would have on loan quality,
22 Ms. Mairone answered: We thought it would improve loan
23 quality. Really? Does that make sense?

24 When asked if relying on CLUES as the underwriter
25 would compromise loan quality, Ms. Mairone answered no, I

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Summation - Ms. Nawaday

1 thought it would help loan quality. Does that make sense?

2 When asked whether she thought that allowing the loan
3 specialists to clear conditions on loans would hurt loan
4 quality, she said: I didn't think it would hurt loan quality
5 at all. Does that make any sense, that replacing experienced
6 underwriters with loan specialists wouldn't hurt loan quality?

7 And when asked why, she pointed to the quality
8 reporting, the reporting that she attacked and she ignored.
9 And she also pointed to all the controls in place, although
10 nearly all the controls had been eliminated on her watch.

11 Ms. Mairone's answers don't make sense because they
12 aren't true. Ms. Mairone was not worried about loan quality,
13 she was concerned about speed and production.

14 And let's look at Mr. Comeaux's response to
15 Ms. Mairone's November 29 email. Does he say great job, this
16 will really help loan quality? Of course not. He says: Great
17 job. This is huge. But reminder, we still have around nine
18 checklists and a few other friction points not yet addressed.
19 When will we get those removed?

20 Ask yourselves, does that sound like a focus on
21 quality or a focus on speed?

22 Now was the quality assurance process debated? Of
23 course it was. And I expect you'll hear plenty more about QA
24 from defense counsel today. But was the quality assurance
25 process so controversial before the Hustle? No. As

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Summation - Ms. Nawaday

1 Mr. O'Donnell testified, findings were typically shared with
2 the people working the line, the people that made mistakes, so
3 that they could learn from those mistakes. But by
4 November 2007, there were simply too many mistakes. That was
5 the problem.

6 And while you heard from some defense witnesses that
7 they disagreed with the QA findings and believed that there
8 were some false positives, was it right for them to ignore the
9 findings entirely? Was it right for them to just keep funding
10 loans when the high risk findings climbed to more than
11 90 percent? You may recall that Ms. Mairone testified that she
12 wanted to investigate QA and determine the root causes of
13 defects. She said to the quality assurance group, in effect,
14 these are just your opinions on the findings, and I think
15 they're wrong, and I'm going to go about business as usual in
16 funding loans. Ask yourself: Why did she do that? What can
17 you infer from that?

18 Ladies and gentlemen, I submit that when you consider
19 Ms. Mairone's email, her November 29 email and the emails
20 around the same time, you will conclude that her testimony last
21 week concerning her focus on quality was completely ridiculous.
22 And I want to remind you of just a few examples. When asked
23 under oath about on-site reviews during her deposition, she
24 said she could not even remember what they were. When asked
25 about them during trial, she claimed to recall not only what

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Summation - Ms. Nawaday

1 the onside reviews were, but also that in suspending them her
2 intent was to get the QA process corrected and the SUS type
3 items prioritized.

4 She wants to you believe that her memory is that much
5 better now. According to Ms. Mairone now, there was no problem
6 with quality in November of 2007. The only problem was with
7 the reporting on quality. But if that were true, if the loan
8 specialists were not struggling and making tons of mistakes,
9 then why did she approve a Quality of Grade suspension that
10 ultimately went on for six months?

11 And remember what she said about the training of loan
12 specialists? At her deposition she knew nothing about the
13 training, she knew only that there was a training plan. At
14 trial she recalled the components of the training plan. She
15 even testified that she was not even aware of a single loan
16 specialist who did not receive proper training. Again, that's
17 quite a change. It's also just plan wrong. We showed you the
18 results of the file reviews for the Central Fulfillment loan
19 specialists in November. In some cases, such as Barbara
20 Heinecke's team in Chandler, Arizona, one of the Hustle
21 centers, the loan specialists failed nearly half of the loan
22 files that they were tested on.

23 How about Ms. Mairone's testimony that the changes she
24 announced in her November 29 email were made only after she
25 reviewed the findings set forth in Defendant's Exhibit 963?

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Summation - Ms. Nawaday

1 That testimony created problems for her when we pointed out on
2 cross-examination that the findings in DX93 were from March of
3 2008, three months after her November 29 email. And you heard
4 Ms. Mairone later try to talk her way out of that testimony by
5 saying she saw similar reports earlier. But where are those
6 reports? Whatever report she was referring to, we haven't seen
7 it, have we? The presentation she said she relied on doesn't
8 go back in time. This addresses only March of 2008. You know
9 when something doesn't make sense, when you are hearing
10 something false, the closer you pay attention to it, the more
11 confusing it gets. That's a sign. Listen to your common
12 sense.

13 You might hear defense counsel try to claim credit for
14 certain changes made to stated income loans in November 2007.
15 They told you about a new tool in determining reasonability of
16 stated income, but this wasn't a change spearheaded by
17 Ms. Mairone or by anyone at Full Spectrum Lending. That
18 change, like other changes, was driven we Drew Gissinger, an
19 executive at Countrywide Home Loans, the same Drew Gissinger
20 who demanded rigorous underwriting in August 2007 who is
21 outside of Full Spectrum and above Ms. Mairone, Mr. Lumsden and
22 Mr. Kitashima.

23 That's what we see in DX755. This was an email shown
24 to you by Mr. Mukasey. Attached are the minutes of yesterday's
25 meeting with the credit/quality control group. Big focus on

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Summation - Ms. Nawaday

1 documenting how we arrive at reasonableness of stated income,
2 which Drew also echoed.

3 And whatever the debate was about quality assurance,
4 we know that in fact it was an early warning sign. You heard
5 that prediction from Mr. O'Donnell, from Mr. Thomas, and from
6 Mr. Brent's emails. The high quality assurance ratings in the
7 fourth quarter of 2007 turned into high quality control
8 findings in the first quarter of 2008. That's when they go
9 from talking about high risk to talking about severely
10 unsatisfactory or materially defective. And the quality
11 control reports showed initial severely unsatisfactory rates of
12 approximately 30 percent. That means the quality assurance
13 reports were on to something.

14 You heard testimony from defense counsel witnesses who
15 tried to tell you the quality assurance had nothing to do with
16 quality. But that's just wrong. It's called quality assurance
17 for a reason. The evidence of poor quality in the first
18 quarter of 2008 is overwhelming. We see it in the reports, we
19 see it in the emails, we see it in presentations.

20 Remember when Ms. Mairone talked about investigating
21 the root causes of defects? There were in fact investigations
22 into the root causes of these high defect rates. And do you
23 remember what they found? That the root causes of poor quality
24 were the very changes that Ms. Mairone, Mr. Lumsden and
25 Mr. Kitashima supported, the Central Fulfillment model, the

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Summation - Ms. Nawaday

1 suspension of Quality of Grade, the restricted communication on
2 quality control findings, and the restricted communication on
3 quality assurance findings.

4 Now if Ms. Mairone cared about loan quality, we should
5 have seen her driving big changes in the first quarter of 2008.
6 But that's not what we saw, is it? Did Ms. Mairone and
7 Mr. Comeaux question this new model? No. They pushed for
8 funding contests. Mr. Comeaux proposed to fund 15,000 loans
9 for the month of February, and he suggested that they continue
10 to provide daily feedback on turn time and roll out a contest
11 for mid month funding. And Ms. Mairone approved that contest,
12 and you heard about it, it was called the On Fire in February
13 contest. In fact, as she testified, Mr. Comeaux could not
14 implement a funding contest without her approval. And you
15 heard about and saw emails about how closely the loan
16 specialists fundings were tracked during that period. You saw
17 an email from Ron Gillet comparing the loan specialists funding
18 competition to a horse race and encouraging them to fund the
19 loans at lightning speed.

20 Of course, it was all fun and games if you were
21 funding lots of loans, but not if you were a low producer. Do
22 you remember that email from James White who ran the Central
23 Fulfillment Center in Chandler, Arizona? He told his group
24 that nobody leaves until they move at least one loan into phase
25 code two.

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Summation - Ms. Nawaday

1 And during this time, we never heard anything about
2 contests for quality, did we? Because there were none. And
3 you know the reason why, because it was all about speed and
4 volume and never quality. And while they were tracking
5 fundings and turn times and application to funding ratios, were
6 they tracking the quality of loan specialists? They said they
7 were. As you heard, Cliff Kitashima testified at his
8 deposition that even while Quality of Grade penalties were
9 suspended, they continued to track the quality. Was that true?

10 Well, we showed you this chart during Mr. Kitashima's
11 testimony, and we can see on this chart that they tracked
12 funding. And we see on the chart that they tracked turn time.
13 But is this what Mr. Kitashima meant when he said they tracked
14 the quality, that everyone was ranked number one? And even in
15 the spring of 2008 when the Quality of Grade hit supposedly
16 return, did we see any evidence of that? No. Where are the
17 Quality of Grade tracking reports? We never saw any, did we?

18 What we saw were emails like this from February in
19 which a Central Fulfillment manager says: It's the first QoG
20 report he's seen since he started in June. And he points out
21 all the the loan specialists on the report have the same score.
22 And let's go back to this email from May in which Mr. Comeaux
23 observes that loan specialists have been receiving no Quality
24 of Grade feedback for months and that they have no organized
25 detail on SUS fundings per loan specialist.

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Summation - Ms. Nawaday

1 But the evidence showed plenty of organized detail on
2 funding rates and turn time averages for the loan specialists.
3 Again, do you find the focus on quality overwhelming, as
4 defense counsel promised? Michael Thomas and Ed O'Donnell,
5 among others, knew the reason that quality was bad during this
6 time, and we know the reason, too. The reason was the Hustle.

7 So in March of 2008, Michael Thomas recirculated the
8 email that we showed you from August this time saying: This is
9 my plan of attack. Oh, wait, this is what we suggested last
10 August. And you saw the responses to that email. We showed
11 you several responses, and in each one people responded in one
12 way or another, basically you were right. Biren Desai, Pamela
13 Richards and Patrick Aliano.

14 Mr. Desai responded: Is the benefit of improved turn
15 time due to control reduction worth the cost of deteriorating
16 quality? At this point, it seems you have your answer, and
17 it's a resounding no.

18 And Patrick Aliano, a risk manager involved in the
19 Hustle design meetings, replied and changed the subject line of
20 his reply to HSSL August. And what does he say? Let's look.
21 Ed will tell you when we sat in the room in July, these were
22 some of the same concerns that we expressed. I want you to
23 remember this email from Mr. Aliano because it shows that he
24 and Mr. O'Donnell and Mr. Thomas all raised concerns from the
25 start of the Hustle. Ask yourself: Does Mr. Aliano have any

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Summation - Ms. Nawaday

1 reason not to be truthful in this email? Think about that and
2 weigh that against the testimony you hear now from defense
3 witnesses claiming that no one ever expressed any concern about
4 the Hustle.

5 As Mr. Thomas explained in his email, it wasn't rocket
6 science to see what was coming. But Mr. Lumsden and
7 Ms. Mairone and Mr. Kitashima didn't listen. That's because
8 they purposely entered into this scheme to churn out bad loans
9 and sell them to Fannie Mae and Freddie Mac. And the scheme
10 would have continued if not for someone above them and outside
11 of FSL, again, Drew Gissinger, who got wind of what was going
12 on within Full Spectrum, and he ordered a meeting with
13 Mr. Lumsden, Ms. Mairone and Mr. Kitashima and Mr. O'Donnell
14 about Full Spectrum's quality issues.

15 And even then, did they straighten up right away? No.
16 First they blamed others and then tried to avoid blame
17 themselves. Mr. Lumsden told Mr. O'Donnell that Full Spectrum
18 no longer fights like it used to on the SUSs, and he directed
19 Mr. O'Donnell to get the defect rates down. And Mr. Comeaux at
20 that point complained to Ms. Mairone that ever since
21 Mr. Gissinger became involved he was no longer winning process
22 disagreements against Mr. O'Donnell.

23 And where was Cliff Kitashima in all this? Where was
24 the director of credit risk, the person above all others tasked
25 with guarding loan quality? He was biding his time, waiting to

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Summation - Ms. Nawaday

1 retire in a few months. According to Mr. Kitashima, there were
2 no real problems. According to Mr. Kitashima, quality
3 assurance had no connection to loan quality. So the high
4 findings -- the high findings rates didn't worry him. Stated
5 income loans didn't worry him either.

6 Mr. Kitashima told you that he believed they were
7 among the highest quality, lowest risk loans. In fact, he
8 might be the only person you heard from who believed that.
9 After all, Michael Thomas told us that stated income loans were
10 sometimes referred to as liar loans. Do you remember that?
11 And Benjamin Tanabe, Freddie Mac's director of credit risk,
12 told us stated income loans are riskier and require more careful
13 underwriting.

14 Even Mr. Kitashima acknowledged that at that time, in
15 2007 and 2008, stated income loans were experiencing high rates
16 of early payment defaults. Those were loans defaulting in the
17 first six months of funding. But Mr. Kitashima still admitted
18 no worries. And according to him, neither did Mr. O'Donnell.
19 He told us that Mr. O'Donnell never even expressed concern that
20 Hustle loans were a poor quality, that Mr. O'Donnell never
21 expressed concern that loan specialists were not qualified, and
22 never expressed concern that loan specialists were determining
23 reasonability of income.

24 Why did he say he remembers none of that? Because he
25 knew that quality was in the ditch, as did Ms. Mairone and

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Summation - Ms. Nawaday

1 Mr. Lumsden, and he did nothing. We showed you this email,
2 PX78, in which Mr. O'Donnell tells him the current process for
3 determining income reasonability is in the ditch. And you
4 heard from other witnesses, like Michael Thomas and Robert
5 Price, that Mr. O'Donnell raised concerns about these issues to
6 Mr. Kitashima. Do you find Mr. Kitashima's focus on quality
7 overwhelming?

8 And what did Ms. Mairone do when Mr. Gissinger
9 recognized the problem with Full Spectrum quality? She first
10 tried to keep some of the bad news away from Mr. Gissinger.
11 She ordered Ed O'Donnell to remove some slides from a
12 presentation. And O'Donnell, when O'Donnell refused, she told
13 him that if he didn't follow her direction, she would find
14 someone who would. You heard Mr. O'Donnell's testimony on
15 that, and he said Mr. Kitashima was there as well. Did
16 Mr. Kitashima say anything contrary when the defense called him
17 to testify? No. In fact, when asked about Mr. O'Donnell,
18 Mr. Kitashima testified that Mr. O'Donnell was very competent,
19 that he relied on him, and there was mutual respect between
20 them.

21 And even when Ms. Mairone was asked about whether she
22 ever ordered Mr. O'Donnell to remove some slides from a certain
23 presentation, she didn't say absolutely not, I would never do
24 that, all she said was not that I remember. But Ed O'Donnell
25 remembers. He told you that she ordered him to remove those

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Summation - Ms. Nawaday

1 slides. And as you heard, the meeting that ended up happening
2 with Gissinger was basically a train wreck, and Mr. Kitashima
3 and Mr. O'Donnell got the blame.

4 As Mr. O'Donnell told you, by that point he had had
5 enough. He had been pushing for more controls for months, he
6 had been ignored, and now he was the fall guy for it. For
7 months he said that the focus was all about speed and volume
8 rather than quality. So he drafted an email and laid out the
9 quality problems and identified the person he saw as driving
10 the changes that led to those problems, Rebecca Mairone.

11 And then he helped set up the sprint incentive based
12 on Mr. Lumsden's directive to drive down the defect rates, a
13 bonus incentive that paid quality control employees for
14 overturning SUS findings from the first quarter of 2008.
15 Rebuttals led to increased paychecks. Employees were paid more
16 the closer they got to reducing the 30 percent number down to
17 the industry standard rate of four percent.

18 At the same time, there was another rebuttal incentive
19 in place that we told you about, the Full Spectrum poker run.
20 We showed you this email from James White saying that those who
21 overturned the most SUS findings would get a seat at the Snake
22 Pit Casino. And defense witness Andrew Porteck described that
23 contest as kind of a fun little game that we played. And those
24 incentives did drive down the defect rates into at least the
25 single digits. And defendants now hold those numbers up in

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Summation - Ms. Nawaday

1 this chart that you have seen so many times during this trial
2 as proof of quality instead of proof of lies. The quality
3 chart that defendants have shown repeatedly during trial
4 reflects the numbers long after these rebuttal incentives had
5 their desired effect. Ask yourself whether these numbers are
6 the ones that you can trust.

7 And let's also remember that there were losers in that
8 fun little game that Andrew Portek described: The borrowers on
9 those loans. At the other end of these loans, which were just
10 part of some contest, were real people with real homes. And
11 the other losers were the purchasers of those loans, Fannie Mae
12 and Freddie Mac, who were told that every loan was investment
13 quality but ended up with loans like the one Maria Brewster
14 described. It was made to the doorman whose application said
15 he made \$13,000 a month. You heard her testify that in fact he
16 made only a third of that and worked in Pebble Beach,
17 California, but was buying a property as his primary residence
18 in Fort Lauderdale, Florida. And as Ms. Brewster explained, a
19 doorman is a job that you actually have to be physically
20 present to do. It would be hard to commute from Florida to
21 California every day.

22 And in the loan files we showed you, you will see lots
23 of evidence of mailings between the borrower and Countrywide,
24 such as a loan file pages like this. And I point that out
25 because we talked earlier about use of the mail and use of

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Summation - Ms. Nawaday

1 interstate wire. So there's obviously a use of mails here in
2 furtherance of defendant's scheme, which is one of the elements
3 you'll be instructed on.

4 And all of the interstate emails that you saw between
5 folks in Texas like Mr. Thomas and Mr. O'Donnell and Mr. Price,
6 and those in California, like Mr. Lumsden, Mr. Kitashima, and
7 Ms. Mairone, were emails that are addressed to all of Full
8 Spectrum Lending, like this one that went to offices in
9 different states, demonstrate the use of interstate wire in
10 furtherance of the scheme as well.

11 Now let me turn back to Fannie and Freddie. Of all
12 the representations and warranties we talked about in the last
13 four weeks, one should stand out: Every loan is investment
14 quality, which means that the borrower is able or likely to
15 repay. You heard that explanation from Michael Sobczak, among
16 others. That requirement of investment quality was never
17 waived. There was no variance from the requirement of
18 investment quality.

19 And that requirement was critical to Fannie and
20 Freddie. Fannie Mae and Freddie Mac were buying millions of
21 loans, and they didn't have the ability to review those loans
22 before buying them, so they relied on the bank's
23 representation, a promise about quality. And you heard from
24 Benjamin Tanabe, Pam Padgett, John Forlines, Maria Brewster,
25 Michael Sobczak, and defense witness David Battany. They each

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Summation - Ms. Nawaday

1 talked about their different responsibilities about the
2 different provisions of the contracts, but each one said that
3 the representation that a loan is investment quality matters to
4 them. And you heard from these witnesses that the
5 representation is critical because Fannie and Freddie buy too
6 many loans to underwrite those loans themselves, and Fannie and
7 Freddie don't want to buy junk.

8 And even though Countrywide sold every loan to Fannie
9 and Freddie with the representation that it was investment
10 quality, only six times did defendants identify a bad Hustle
11 loan for them and say wait we need to correct what we said,
12 that was actually a bad loan. And why is that important?
13 Because it shows that defendants had no intention to correct
14 their false and misleading representations about quality. They
15 intended to deceive Fannie and Freddie. They kept Fannie and
16 Freddie in the dark about the quality of the Hustle loans they
17 sold them, loans sold with lies.

18 Now defense counsel may get up and argue all the
19 things that didn't matter to Fannie and Freddie, and they might
20 argue they disclosed some particular aspect of the Hustle
21 process in tiny print in an appendix to a presentation they
22 showed you. But this is nonsense. No one from Fannie Mae or
23 Freddie Mac testified they ever even saw such a presentation.

24 And they might argue that Fannie Mae and Freddie Mac
25 loved CLUES. This doesn't matter. The fraud was not CLUES,

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Summation - Ms. Nawaday

1 the fraud was selling bad loans as good loans to make a quick
2 profit. Defendants never disclosed that they were doing that.
3 They never disclosed that they knew that their bad loans were
4 sold to Fannie and Freddie as good loans, period.

5 What other proof is there that the Hustle loans were
6 terrible quality? That's where the experts came in, and you
7 heard from two in our case. You heard from Ira Holt, an
8 underwriting expert, who explained his methods, how nearly
9 every member of his team of underwriters worked together in one
10 office in Alabama re-underwriting all the Hustle loans. He
11 hired his own underwriters, he trained them, and he had
12 constant dialogue with them about the loans. His methods made
13 sense, and he answered questions about his methods in a
14 straightforward way. And what he found was that more than half
15 of the loans in the sample of 343 loans provided to him,
16 53 percent, were materially defective, meaning they were not
17 investment quality.

18 Now our second expert, Dr. Charles Cowan, was a
19 statistician. So he took that number from Mr. Holt and he did
20 what is called an extrapolation, and he told you what that
21 means. He told you what he does is sort of like estimating the
22 outcome of a political election based on random polling. So he
23 took the defect rate of 53 percent from a random sample of 343,
24 and he projected what that would mean for the entire population
25 of Hustle loans sold to Fannie Mae and Freddie Mac. And

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1 Dr. Cowan concluded that approximately 43 percent of those
2 loans were materially defective. And again, by "materially
3 defective," we mean that the loans were not investment quality
4 and should not have been sold to Fannie Mae and Freddie Mac.

5 Finally, Lars Hansen, our witness from FHFA, Office of
6 Inspector General, explained the data that the banks provided
7 on Hustle loans, and he talked us through some charts, charts
8 like this one showing that the bank earned more than \$165
9 million on Hustle loans. And he talked us through this chart,
10 PX430, showing us that more than 75 percent of Hustle loans
11 between August of 2007 and January of 2008 were rated high risk
12 or action required by the quality assurance group.

13 Now the defense might say that our sample of Hustle
14 loans is overbroad, that it included loans that never in fact
15 went through the Hustle process. And they called Anthony Ho in
16 their case to testify about how Hustle loans should be defined.
17 And Mr. Ho gave some technical arguments about data and what he
18 believed the Hustle population really consists of based on
19 branch center codes and things like that. But Mr. Ho admitted
20 that he had no personal knowledge of the criteria that should
21 be used to identify Hustle loans. He was never involved with
22 the Hustle. Mr. Ho's criteria were based on documents provided
23 to him by bank counsel, as he explained to you.

24 And as you heard, the bank's loan data that Mr. Ho
25 relied on and testified about in fact contained a Hustle flag.

DAMTBAN2

Summation - Ms. Nawaday

1 Now you would think that a Hustle flag in the data could be
2 used to identify Hustle loans, wouldn't you? But as Mr. Ho
3 tried to explain, the bank considered the flag to be
4 unreliable, because they found it flagged loans incorrectly.

5 All of these technical arguments are just designed to
6 move your focus away from the experts' loan quality findings.
7 Whatever the exact number of Hustle loans, and we say it's
8 28,800, the proof is overwhelming that the Hustle loans were
9 terrible and sold to the GSEs with lies. And if anyone has
10 made that clear to you, how bad the loans were, it was the
11 underwriting expert called by the defense, Robert Broeksmit.

12 Mr. Broeksmit told you that his job was only to rebut
13 Mr. Holt's findings. And not all of his findings, only the
14 loans that Mr. Holt found to be investment -- sorry, to be
15 materially defective. Does this sound familiar? Does this
16 sound like the sprint incentive? Does this sound like another
17 round of the FSL poker run?

18 And Mr. Broeksmit's methods made no sense. He
19 admitted that he and his staff never looked at all the loan
20 files. They didn't do a full re-underwriting of any loan. He
21 told you that he never met most of the underwriters on his
22 team, and he stayed in touch mostly with his three top level
23 reviewers. And what were the qualifications of the three top
24 level reviewers to do this expert job? As you heard, two of
25 them were defense lawyers, defense lawyers instead of

DAMTBAN2

Summation - Ms. Nawaday

1 underwriters. Mr. Broeksmit admitted that they had no direct
2 underwriting experience. That wasn't a prerequisite for the
3 job. And of course, Mr. Broeksmit rarely had to overrule their
4 recommendations.

5 And we also showed you Mr. Broeksmit's instructions to
6 his team. These were the instructions that he gave them before
7 they started their review, and those instructions gave his
8 reviewers a road map on how to rebut the findings made by the
9 government's expert. That's not an objective review, that's
10 just a method designed to artificially drive down the defect
11 rate. And Mr. Broeksmit also admitted there was no possible
12 way he could arrive at a higher defect rate than our expert.

13 So ladies and gentlemen, ask yourselves this, if they
14 think their loans are so good, why didn't they let their own
15 expert review them? That's the question they don't want you to
16 ask, and that's the question they can't answer. But you can
17 use your common sense and arrive at your own answer, because
18 they do know the loans are bad and they also knew why they were
19 bad. That's why they were ordered to finally bring back the
20 underwriters in May of 2008 after thousands and thousands of
21 bad loans had been sold to Fannie Mae and Freddie Mac.

22 You saw that recognition not just from Mr. O'Donnell,
23 Mr. Thomas and Aliano, but from Wade Comeaux, the manager of
24 Central Fulfillment, who told Greg Lumsden that they had to,
25 quote, change the culture that was highly focused on turn time,

DAMTBAN2

Summation - Ms. Nawaday

1 a culture that was created at the direction of Ms. Mairone,
2 Mr. Comeaux, Mr. Kitashima and Mr. Lumsden.

3 I just want to talk for one more minute about
4 Mr. O'Donnell, because I expect you will be hearing more about
5 him in the defense summations. I expect you'll be instructed
6 by Judge Rakoff on assessing the credibility of witnesses, and
7 you should, of course, evaluate Mr. O'Donnell's credibility as
8 you would any other witness. Consider his knowledge of the
9 facts, consider how he testified on direct and cross-
10 examination. He endured seven hours of cross-examination by
11 very experienced lawyers. You saw how his demeanor remained
12 calm, and how he remained forthcoming in his answers. He told
13 you that he was the whistleblower. He told you he gave
14 conditional approval to the Hustle pilot. He told you,
15 frankly, that he had disagreements with Ms. Mairone and that he
16 continued to speak out about quality issues. He told you that
17 he was in a tight spot in the spring of 2008 and that he helped
18 start the sprint incentive. Defendants might fault him for
19 that. But Mr. O'Donnell doesn't have to be perfect to be
20 credible. His testimony, unlike that of Ms. Mairone and
21 Mr. Kitashima, is corroborated by his own documents in 2007 and
22 2008.

23 In their opening statement, defense counsel suggested
24 that somehow Mr. O'Donnell lived one life then and sees things
25 differently now. I urge you to test that. Look back at

DAMTBAN2

Summation - Ms. Nawaday

1 Mr. O'Donnell's draft email and look to see how similar in fact
2 it is to what he said on the stand. And remember that his
3 testimony is also corroborated by the testimony of Michael
4 Thomas, Robert Price and John Boland.

5 And let me also say a few words about some of the
6 other witnesses that you heard from in the last few weeks, and
7 in particular, who else you heard from from the defense. Jack
8 Schakett. Throughout opening statements on both sides, and
9 throughout the government's case, I don't think we ever heard
10 the name Jack Schakett. So you might have wondered why he was
11 the kick off witness for the defense. He was a Countrywide
12 employee, but he wasn't a Full Spectrum employee. And he
13 testified that he never heard of the High Speed Swim Lane in
14 2007 and 2008. The defense case started with a witness you
15 never heard of who knew nothing about the High-Speed Swim Lane.
16 What does that tell you, ladies and gentlemen?

17 You also heard from Lori Pepper, another witness whose
18 name probably never surfaced during the first two weeks of the
19 trial. And Ms. Pepper testified on direct examination about
20 how CLUES works. And she said that if a loan receives a CLUES
21 accept, it's considered to be investment quality. That seemed
22 like a pretty sweeping statement, didn't it? Maybe that's what
23 defendants have to say to argue that they sold good loans.
24 Maybe they have to argue that all CLUES accept loans are good
25 loans.

DAMTBAN2

Summation - Ms. Nawaday

1 But that's just false. We know that is false because
2 we heard testimony about how -- about all the things, frankly,
3 that CLUES can't do. CLUES cannot clear conditions on a loan.
4 You heard how CLUES cannot evaluate an appraisal. You heard
5 how CLUES cannot determine reasonability of income. And in
6 fact, Countrywide's own underwriting guidelines even set out
7 these steps in explaining how to underwrite a CLUES accept. So
8 how could you have an investment quality loan that does none of
9 these things? Answer: You couldn't.

10 And that's ultimately what Ms. Pepper admitted on
11 cross-examination. She admitted that you need a qualified,
12 trained human being to look at the conditions on the loan, to
13 review the appraisal, to address any issues with the appraisal.
14 And ultimately, she completely contradicted her direct exam
15 testimony. She admitted that a CLUES accept does not mean that
16 a loan is investment quality. Because, as you heard from
17 numerous witnesses, underwriting involves judgment calls, and
18 you need qualified people to make those calls.

19 So why was Ms. Pepper trying to convince us that a
20 CLUES accept was all we needed for a good loan? Because she
21 wanted you to believe that you don't need underwriters.
22 Because if you don't need underwriters, then maybe the Hustle
23 won't look so bad. But it does look bad, and it was bad
24 because it was fraud.

25 And before I complete my remarks, I just want to thank

DAMTBAN2

Summation - Ms. Nawaday

1 you on behalf of myself, all the lawyers and staff for the
2 United States, and all the lawyers and staff for the defendants
3 for the patience and attention that you have shown to all of us
4 as you heard all of the evidence come in. We know this has
5 been a long road for all of you and we know that you have had
6 to make sacrifices to be here for the last four weeks.

7 As we promised at the beginning of this trial, the
8 evidence has proven that the defendants committed fraud by
9 putting speed and volume over quality and selling loans with
10 lies. And now it's your turn to evaluate that evidence for
11 yourselves. So in doing so, we ask you now, as we asked you at
12 the beginning of this case, to listen closely to Judge Rakoff's
13 instructions on the law and to follow them. And we ask you
14 now, as we asked you at the beginning of this case, to use your
15 common sense.

16 If you do those things, the defendants will get a fair
17 trial, the government will get a fair trial, and you will
18 return a verdict that is fair and just. And the verdict the
19 government respectfully asks you to reach, the verdict the
20 evidence compels, is that the defendants are liable for fraud.

21 Thank you.

22 THE COURT: Thank you very much. All right. Ladies
23 and gentlemen, we'll take a 15-minute break.

24 (Jury not present)

25 THE COURT: All right. Well, I am delighted that the

DAMTBAN2

1 government counsel only took two-thirds of her allotted time.
2 I hope that's a good precedent.

3 Anything counsel needs to raise with the Court?

4 MR. SULLIVAN: Given the early time, I still plan to
5 split one hour, one hour. Is that OK with the Court?

6 THE COURT: Yes. So what we'll do is we'll take an
7 early lunch then, so we'll start again at approximately 11:30
8 and go to 12:30, take lunch to 1:30 and then give you your
9 second hour right after lunch.

10 Very good. See you in 15 minutes.

11 (Recess taken)

DAM3BAN3

(In open court; jury not present)

MR. MUKASEY: Judge, may I raise one quick issue. I wanted to go back and check the record before I raised it, Judge.

THE COURT: Please be seated.

MR. MUKASEY: As you know, I'm not one of the orators today, but hopefully wearing my jury hat, the jury charge conference had raised this.

There was a moment during Ms. Nawaday's summation when she was referring to DX 963, which is a PowerPoint presentation, where she asked of Ms. Mairone -- and I think I'm quoting pretty closely here -- where is the proof of the documents that Ms. Mairone looked at. Where are the records, where are the reports.

Judge, I think credibility attacks obviously when Ms. Mairone takes the witness stand are in bounds, but burden shifting is not. And asking why she didn't produce reports or records is really an improper shifting of the burden in a case where the defendant has no burden.

THE COURT: No, I think where a party makes assertions, as you did on your opening with respect to Ms. Mairone, and she did herself in her testimony, which are either uncorroborated or not corroborated through the obvious corroboration that the jury could find was reasonably available, I think it's fair comment to point out the absence

DAM3BAN3

1 of such corroboration. That's what I took the statement to be
2 made.

3 Now, of course, there will be included in the
4 instructions, indeed it was I think in your request that it was
5 added to the instruction -- no, it was bank defendants'
6 request, but anyway, that they should not speculate about
7 matters outside of the evidence, and you can of course refer to
8 that if you wish on your summation.

9 But, I think there is a difference between saying that
10 the burden is on the government and saying that some evidence
11 that would be available to a party to corroborate assertions
12 that have been affirmatively made by that party has not been
13 produced. So I think that was fair comment.

14 MR. MUKASEY: I certainly agree that asking where in
15 the record is the proof of X is fair comment. Asking why the
16 defendant didn't produce it is the issue I want to flag and
17 preserve.

18 THE COURT: I hear what you are saying. But I think
19 the reasonable way that the jury took it was along the lines of
20 how certainly I interpreted it when I heard it.

21 Thank you for raising it, but I don't think it
22 requires any further action by the Court.

23 Let's bring in the jury.

24 (Jury present)

25 THE COURT: All right, ladies and gentlemen, we will

DAM3BAN3

1 now hear from counsel for the bank defendants. He has been
2 allotted two hours. He's going to take one hour now and we'll
3 take lunch a little bit early and have the second part after
4 lunch.

5 Mr. Sullivan.

6 MR. SULLIVAN: Thank you, your Honor, counsel for the
7 government.

8 No fraud. Those were the first two words I spoke to
9 you at open. The first two words I speak to you today, because
10 this case is totally absent of fraud. The government is right
11 in closing argument that I promised you an enormous amount of
12 quality. I stick by that promise, and I'm going to take you
13 through it in painstaking detail to show you the concern for
14 quality in the company.

15 Counsel for the government says we're in the
16 fantastical voyage two realities. That's absolutely true. I
17 agree with counsel 100 percent. We have been dragged down the
18 rabbit hole into Alice in Wonderland. We've been asked to look
19 for evidence for four weeks that the government says is fraud,
20 and I suggest to you that what it is, is men and women at work
21 in the mortgage industry doing their jobs.

22 So let's begin. The government brought a very
23 narrowly focused case here. It focuses on High-Speed Swim Lane
24 loans. As it turns out, there aren't 28,000 of them as the
25 government suggests. There are actually only 11,000. But

DAM3BAN3

Summation - Mr. Sullivan

1 who's counting. This is a fraud case about quality. We'll
2 demonstrate how the government is wrong by 17,000 loans.

3 No evidence of fraud, no scheme to defraud, no
4 misrepresentation, no violation of law. The government has the
5 burden of proof, and the defense has none. Yet, we have
6 essentially proven that there is no fraud and that there is
7 quality. I'm not taking on the burden, but in essence that's
8 what happened.

9 It is very hard to describe nothing. When I say
10 nothing, I'm talking about weeks of evidence that amount to
11 nothing when it comes to fraud. Nothing. I think of, to
12 continue the baseball analogy, I think of Yankee Stadium on a
13 snowy day. Picture the stadium, all the pictures we see,
14 they're filled with fans. But an empty stadium, I think of a
15 car running out of gas. Empty tanks. I think of the bottles
16 piled up in the hallway. There are just empty water bottles
17 with nothing in it. That's what this case is in terms of
18 fraud. What fraud is.

19 Indeed, when the government tried to present witnesses
20 who actually worked in the industry, either at Countrywide, or
21 worked at Fannie and Freddie, their testimony, each and every
22 time and their documents negate fraud. They bring witnesses
23 that turn out to be witnesses favorable to the defense, and the
24 evidence always points back to one thing. Reality. Reality.
25 Men and women at work.

DAM3BAN3

Summation - Mr. Sullivan

1 I think of riding down a highway, how many times have
2 we seen the sign men at work. Slow down. Men at work. That's
3 all this evidence shows. When you think about it back there in
4 the jury room, it's men and women at work doing their jobs in a
5 difficult industry, the tedious processing of loans.

6 What we've seen here, really, is a government theory
7 in search of evidence. And it is a very difficult burden,
8 because the government's chief witness, Mr. O'Donnell, seeking
9 a-million-six-five in money reward, he wrote a document saying
10 there was no fraud when he lived it.

11 It is easy here in the 14th floor of a courthouse in
12 New York to look back five or six years on the lives of men and
13 women who were on the front line doing business, all of a
14 sudden say this is fraud.

15 The government calls witnesses such as O'Donnell,
16 Thomas, Boland, and Price, and what do they all do? They speak
17 in normal tones of every day business. What's going on. One
18 person thinks this, one person thinks that. Government counsel
19 makes a joke of collegiality. The one thing that stunned me is
20 it's pretty collegial. Everybody has an idea, they send a
21 memo, they think this, they think that. Everybody listens to
22 each other. They don't do anything without getting a meeting
23 with 20 people together. They have a 10, 12, 15 person
24 committee to talk things out.

25 They bring expert witnesses, of course, that are

DAM3BAN3

Summation - Mr. Sullivan

1 working off statistics that they think are 28,000 loans, when
2 they're actually wrong by about 17,000.

3 Each time this theory in search of evidence hits a
4 brick wall, and I call that wall reality, so that's why I agree
5 with the government that we really are in two different worlds.
6 Counsel calls it a fantastical voyage into reality.

7 It is even implausible the case they make. It doesn't
8 even sound like fraud. You would not expect a fraud to begin
9 with two PhDs and a large steering committee and weeks of
10 consultation with many persons in the company with different
11 experience, different expertise. You would not expect the
12 government's witness to say the plan was a good idea and had
13 merit. But that's what happened in this case.

14 You would not normally design a pilot program to see
15 if the fraud worked. You would not normally announce the fraud
16 at a town hall meeting with 200 people present, play the Hustle
17 dance, dance, and as one government witness said, it was fun.
18 That's a very strange way to kickoff a fraud.

19 You wouldn't normally have a vigorous quality
20 assurance program, including 20 people in India looking at the
21 loan files at night after the workers in America had finished
22 their work, to see how the fraud's going. To find the mistakes
23 in the process.

24 You would not normally have a vigorous quality control
25 program looking at loans that were produced by the so-called

DAM3BAN3

Summation - Mr. Sullivan

1 fraud. Seems inconsistent with a scheme to defraud, to have
2 people doing quality control checks and getting these high
3 statistics on them.

4 It seems inconsistent with the fraud to increase your
5 number of audits during the midst of it from 408 to 1,742
6 audits. Why would you do that if you didn't care about
7 control?

8 You would not normally make repeated changes. If
9 there is one thing you see in this record for month after
10 month, beginning in September, October, November, right through
11 the end, you see changes, adjustments, changes, memos, e-mails
12 and meetings to change the system to deal with some of the
13 quality issues that they do find.

14 Finally, if it is really a fraud, you'd think you'd
15 have a victim of the fraud who complained about something the
16 defendants did or did not do in 2007 and 2008. They brought
17 five witnesses from Fannie and Freddie Mac. Not one of them
18 said anything negative about Hustle loans or about the process.
19 Not one of them. They all failed to support the allegations of
20 fraud.

21 I'd like to dive right into the evidence with you by
22 focusing on their early witnesses. The government alleges that
23 the indices of fraud are to be found in the speeding up of the
24 loan production via Hustle in Central Fulfillment. The
25 removing the underwriters and using loan specialists.

DAM3BAN3

Summation - Mr. Sullivan

1 To this day, after all these weeks, the government
2 doesn't seem to acknowledge that there actually were
3 underwriters on this team. Remember the witnesses that
4 circled? There was a reduction in force in the company and
5 some of the underwriters no longer could have a job, so they
6 went to be loan specialists. That's why you see these loan
7 specialists -- underwriters showing up on the team.

8 By the way, your Honor. I lost track of the time.
9 What time did we start so I'll know when we finish?

10 THE COURT: You started at 11:40.

11 MR. SULLIVAN: Thank you, sir.

12 The government doesn't seem to want to acknowledge
13 that every time they demean the people in the company by saying
14 they're clerks, that loan specialists were there doing the job
15 but some of the people who carried the title loan specialist
16 were former underwriters, you saw that every time someone was
17 circled.

18 How does the defense reply to these allegations?
19 First off, the government's chief witness, Mr. O'Donnell, the
20 whistle blower, actually approved many of these initiatives.
21 If he's the good guy, he approved them. That's consistent with
22 no fraud. His testimony negates the allegations of fraud. It
23 doesn't support them. And remarkably, as I'll show you in a
24 second, he says there was no fraud. Actually wrote it in a
25 memorandum. And in another memorandum he brags about the good

DAM3BAN3

Summation - Mr. Sullivan

1 work that he and others had done over this period of time.

2 Let's look first at slide number one, Alex, please.

3 What did O'Donnell think about the High-Speed Swim Lane as he
4 lived it? On May 14, Mr. O'Donnell wrote an e-mail saying that
5 there was no fraud. Look at it. This is Defendant's 62. I'm
6 quoting: It was reassuring to see all the controls we've had
7 in place over the years. Sounds positive. Our exposure is to
8 manufacturing quality, not fraud.

9 Why would a man write that if he ever thought there
10 was fraud? Or unethical stuff, he says. He's writing to his
11 colleague, Mr. Thomas. Here he says: I think we've reacted
12 well each time we find a trend and seal the gaps.

13 That's exactly what happened. That was what was going
14 on. As they worked through a process that they were putting in
15 place that was a new process.

16 Mr. Thomas, the government's first witness responded
17 to that e-mail. What did he say? Defendant's 62, page four.
18 "Yes, that's what's difficult. All that noise cheapens the
19 efforts everyone has made over the years in making sure we are
20 doing the right things."

21 I almost want to sit down and do nothing more in the
22 case. But of course, lawyers are dogs with a bone. I can't
23 stop until my time runs out.

24 But that's the start. Hold on to that, think to
25 yourself, whenever there is a suggestion about someone says

DAM3BAN3

Summation - Mr. Sullivan

1 something about fraud, that Mr. O'Donnell, the million-six man
2 himself says there is no fraud as he lived it.

3 By the way, he doesn't say much different today. You
4 could take his testimony. He looks like he tried to do his
5 best. He didn't even come in here and say there was -- give
6 evidence from which one could conclude there was fraud. So
7 let's proceed.

8 Eight months later on January 12, O'Donnell wrote
9 another e-mail in which he bragged about the good job done by
10 the people in his division. Plaintiff's 1, slide three,
11 please.

12 Here he's telling -- this is just six months after the
13 Hustle is over. Listen to his words: After experiencing
14 challenges in Q4 2007 and early Q1 2008, we made changes to
15 work flows, training content, authority certification and
16 compensation plans that have played an important role in the
17 returning division's results to target environment for quality
18 as defined by corporate audit performance. We've effectively
19 leveraged our central model and the results demonstrate our
20 management team's ability to be responsive to rapid market
21 shifts as well as internal standard adjustments.

22 That's what he said when he lived it. He praised the
23 performance of his colleagues in the same document at page 75
24 of 197: The trending illustrates that the remediation enacted
25 with legacy FSL during Q1 2008 had the desired impact of

DAM3BAN3

Summation - Mr. Sullivan

1 bringing quality back to the target environment. We will be
2 finalizing Q3 QC results by midweek and it will be our second
3 consecutive quarter under 4.5. Which is the target that they
4 had.

5 On August 18, one week into the Hustle program,
6 Mr. O'Donnell wrote an e-mail praising the process and bragging
7 about the improvements. Look at this, at slide five. This is
8 O'Donnell talking: Week one is behind us with Hustle and I
9 think good initial progress was made. He closes by saying
10 we've even seen a loan go clear to close in the same week they
11 were approved.

12 He testified that designing the Hustle was a
13 collaborative effort. He said it was a cross functional
14 process they had. They brought experts in from all areas. He
15 testified that the results of the Hustle design process were
16 announced to hundreds of people. He testified that he actually
17 approved many of the practices and procedures.

18 The government now says it is an indicia of the fraud.
19 For example, he wanted to streamline it, speed up the process.
20 Look at this e-mail he wrote just before the process went into
21 effect. This is July 2nd, 2007. Slide six, please. This is
22 O'Donnell. Sounds like normal business. Normal concerns.
23 Life as they lived it.

24 He says: Let's face it. Loans take too long to fund
25 here. Cost too much to move through our process and require

DAM3BAN3

Summation - Mr. Sullivan

1 far too many conversations

2 I got to hand it to you. They had a lot of
3 conversations in that company.

4 Listen: Far too many conversations. Hand offs and
5 systems. This is O'Donnell talking. He says we have many
6 steps in our work flow that were built for another time.

7 Yes. What is the other time? The subprime market
8 that that division handled. He said built for another time.
9 Different products or periods where margins were much more
10 robust.

11 That's Mr. O'Donnell as he lived it. He further
12 testified that he was asked, for example, a question:
13 Mr. O'Donnell, you agreed that one of the things that needed to
14 be changed was the amount of time it took to actually process a
15 prime loan versus how long it took to process a subprime loan
16 in the 2007 time period, is that correct?

17 His answer: That's true. I believe that beginning before
18 2007, prime loans and subprime loans contained different levels
19 of risk, so yes, that's true.

20 "Q. With respect to the High-Speed Swim Lane, you wanted to
21 deliver a measured process that would allow Full Spectrum
22 Lending to fund good quality prime loans more quickly, is that
23 correct?

24 "A. That's true. For some prime loans I supported them going
25 through the process."

DAM3BAN3

Summation - Mr. Sullivan

1 Ladies and gentlemen, it took me until today to
2 understand, really, what the flaw in the government's argument
3 is. The basic flaw in the argument that I suggest you ponder
4 in your deliberations. If I can find it. It's here. Here it
5 is.

6 The failed logic in the argument is this. Now, I'm no
7 expert at manufacturing anything. But the government told you
8 to use your common sense, and here's where I ask you to use it.
9 The flaw in the logic of the government, and you see it in the
10 argument is this: The government thinks speed trumps quality.
11 That speed wipes out quality. That speed negates quality. The
12 government's argument is speed instead of quality. That's the
13 flaw. That's the central flaw in the government's case.

14 When General Motors builds a car, do you think they
15 know how long it takes from day one to whatever the day is it
16 drives off the lot, I don't know, 10, 15, 40, I don't know.
17 Does General Motors look at the process all the time to figure
18 out how to build and robots and so forth a better car faster?
19 Of course they do. But they don't end up by speeding up their
20 line and developing a car that's not a quality car. Their goal
21 always is a quality car.

22 The focus on speed is perfectly natural. Any
23 manufacturing process has to focus on how long does it take to
24 do it. Can we do it better. And that's what you've seen here.

25 How about a house. I don't know how long it takes to

DAM3BAN3

Summation - Mr. Sullivan

1 build a house. A year? 18 months? Well, if you built a house
2 and it took three years, you're bound to lose money. So
3 anybody who ever made anything has to focus on speed and
4 quality.

5 That's what these people were doing. They had to
6 produce quality loans. It is all over their documents. All
7 over their conversations. Quality was always on their mind.
8 But they also had to speed it up. As some people said, one of
9 the reasons you speed things up is for customer satisfaction.
10 When customers want to buy a house or refinance a house, they
11 don't want to sit there for 25, 40 days until they get it
12 processed. So it is a combination.

13 By the way, let me correct the record. Counsel
14 unfortunately mentioned borrowers being victimized. Please.
15 This case has not one word of evidence with respect to
16 borrowers. It is not about borrowers. Borrowers applied for
17 loans because they want money. This is a process to get them
18 money for their refinancing. That's what this is about. This
19 is not about borrowers. This is about the High-Speed Swim Lane
20 loans.

21 Here's another one. Slide seven. From Mr. O'Donnell.
22 He confirmed the importance of speed in a deck prepared by him.
23 This is May 2007. Look what he says: Prime loans need low
24 touch, low cost processing. Prime borrowers require faster
25 turn time to keep them from going elsewhere.

DAM3BAN3

Summation - Mr. Sullivan

1 We just listened to an argument in which turn time is
2 a sin. It is a crime. It's indicia of crime. I don't mean
3 crime. It is an indicia of fraud. Here's Mr. O'Donnell
4 recognizing you need a better turn time.

5 The government says that it is an indication of fraud
6 that Countrywide had loan specialists handle stated income
7 loans. It was Mr. O'Donnell that said it was a reasonable
8 management practice to handle stated income loans.

9 The government claims that the removal of quality of
10 grade penalty was tantamount to fraud. You heard that today in
11 the argument. Mr. O'Donnell testified that he approved of
12 quality -- QoG they call it -- quality of grade suspension
13 during the pilot program at HSSL. It was explained to you
14 there is a reason for that. You got new workers taking on new
15 responsibilities, it is a good thing to say to them, do your
16 best, do get the product done, increase the speed, and by the
17 way, in this new process we are not going to ding your
18 compensation X dollars. That is a management decision. That
19 is not an indicia of fraud.

20 By the way, the government still at this late stage
21 ridicules the rebuttal process and the suggestion that the
22 rebuttal process is a fraud. They talk about it as if it's
23 dirty somehow. Rebuttal process is when you have a lot of SUS
24 findings, severely unsatisfactory, and now you're supposed to
25 address them and see what you can do about them. It was a

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Summation - Mr. Sullivan

1 process that Mr. O'Donnell and all the other witnesses thought
2 was a good process. You're supposed to look at it. You're
3 supposed to correct it. Look at what Mr. O'Donnell says on
4 transcript eight, please:

5 "Q. Mr. O'Donnell, you thought that the rebuttal process was a
6 valuable process to get to the right number, correct?

7 "A. The right SUS number?

8 "Q. Yes."

9 Look at these words, ladies and gentlemen. Why are we
10 talking about this four weeks into the case as something bad?

11 "A. I thought the rebuttal process was valuable in the sense
12 that it gave us the opportunity to review with corporate QC
13 their findings, and for us to provide any input or
14 documentation if we believed the loan should have a lower
15 rating."

16 How many of these things can you hear from the
17 government about being bad, when their own witnesses, and this
18 is Mr. good guy, says it is a valuable process. And don't
19 think they talk about it just as it was normal because it was
20 normal. This is the way they lived it. This was part of their
21 work.

22 The government also claims that the sprint incentive
23 was an indication of fraud. Sprint incentive, oh my goodness.
24 Poker night down there at work. Or an Outback gift certificate
25 is somehow dirty. Think about this. That's why I agree it is

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Summation - Mr. Sullivan

1 a fantastical voyage. The sprint incentive was designed -- and
2 it was the idea of Mr. O'Donnell -- in order to get people
3 enthusiastic about addressing the high SUS findings, so they
4 that they could correct them and they did correct them in large
5 measure.

6 Look, slide nine, Alex, please. Here's Mr. O'Donnell
7 talking again. Very solid progress, he says. Very solid
8 progress yesterday with concluding and successfully reducing
9 initial SUS files. Need to keep that same pace today and
10 tomorrow to ensure we achieve our goal of eliminating any
11 backlog on initial SUS findings received by 5/1.

12 How can this at this stage in the game be talked about
13 as bad? Looked further. The entire group, by the way, he says
14 the entire group has a chance to earn some extra bucks for the
15 effort. Let's make sure they see the direct connection between
16 reduced random ratings and increased paychecks. Great day
17 yesterday. Keep it up.

18 How can we any longer think about the rebuttal process
19 or the sprint incentive as being wrong or an indicia of fraud?
20 It was treated in the normal course. No witness testified that
21 it was bad. No witness said they didn't think it should be
22 done.

23 And the next witnesses we see, Boland and Price and
24 all the rest of them, they were enthusiastically in favor of
25 it. Mr. Boland, another chief witnesses of the government,

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Summation - Mr. Sullivan

1 he's writing memos asking the comptroller to approve the
2 metrics in the bonus system. Government says that high scores
3 in the QA is evidence of fraud. But Mr. O'Donnell confirmed
4 the QA was mostly about process.

5 I hope by now we understand this. Quality assurance
6 was dealing with the process. How do you make the table. How
7 do you make the camera. Make it, 10 days to make it, watch the
8 process, did they solder it the right way. It is not even up
9 to the end product. Quality assurance they do that.

10 Quality control is once you've got it all made, now
11 you look at it. Very different things. Very different.

12 And the government today says, like they said in
13 opening, oh my gosh, it's so high, these process things, they
14 were so high. They were coming in from India. By the way,
15 they acknowledge half of them were wrong anyway. Half of them,
16 the quality people in India were wrong. They thought something
17 was in the file, it wasn't in the file. But they found out the
18 standard operating procedure of the company didn't require it
19 to be in the file.

20 Listen to O'Donnell's words. The government tried to
21 conflate the high scores in quality assurance in the process.
22 But all the witnesses say it is just process. And the
23 witnesses, including the Fannie and Freddie witnesses, say that
24 we didn't pay any attention to that. What they did internally,
25 we're interested in the final product. Which makes sense, of

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Summation - Mr. Sullivan

1 course.

2 Here's O'Donnell again on this issue. Slide 10, Alex,
3 please. Listen. The QA reviews to date have been heavily
4 focused on process steps. I believe it's tough to draw
5 conclusions directly from those.

6 The government wants you to draw conclusions to that,
7 ladies and gentlemen. They want you to draw conclusions that
8 that's fraud. O'Donnell says he can't even draw conclusions
9 when he lived it about its affect on the process or even the QC
10 findings alone. He says, further, much has changed in the
11 marketplace with regard to quality standards since we started
12 discussions about HSSL last summer.

13 O'Donnell also testified that it is unreasonable to
14 expect no loans to be defective. Even though some defects were
15 unavoidable, O'Donnell e-mails confirm that his division was
16 very serious about quality.

17 Look at this one. DX 56, slide 11. Our prime
18 business model has CLUES as the centerpiece handling the vast
19 majority of eligibility decisions.

20 Isn't that what the government is saying is wrong
21 here? We empowered our branch and Central Fulfillment managers
22 and loan specialists with authority to validate CLUES input and
23 clear a higher percentage of conditions. Isn't that what the
24 government is complaining about? Didn't sound like he's upset
25 by it then when he lived it five or six years ago, 3,000 miles

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Summation - Mr. Sullivan

1 away. He says this additional authority comes with great
2 responsibility and accountability.

3 He further says, how about this one. FSL, his
4 division, has enjoyed the strongest reputation for quality
5 among Countrywide's divisions for many years.

6 Why are they changing all of a sudden? They are
7 adapting to changes forced upon them by market conditions.
8 They're trying to find better systems.

9 Maybe the problem is whenever you get two PhDs to
10 design something you've got problems. Maybe it should be one
11 PhD per project. Both of those gentlemen, did they appear
12 credible? You saw both of the doctors on the stand. One a
13 space engineer. Do you think for a minute when you saw that
14 flow chart up there that that gentleman thought he was
15 designing a process to facilitate some fraud? This is
16 ridiculous.

17 Lastly, to underscore the absurdity of the fraud
18 allegations, Mr. O'Donnell testified that he actually applied
19 for the top job in the Central Fulfillment Division. That's
20 hardly something you would do if they were perpetrating a
21 fraud. "I want to be the head of this fraud." Doesn't make
22 sense. If he's in an environment where they're doing something
23 wrong, why doesn't he leave? Why doesn't he stand up and
24 scream like any responsible person would do.

25 What you see here is men and women at work. Not

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Summation - Mr. Sullivan

1 faulting O'Donnell. I am just saying that the twists that's
2 being put on the life O'Donnell and others lived makes no
3 sense.

4 He's not alone. Let's quickly look at some of the
5 others. How about Thomas, Boland and Price. The government
6 again says the High-Speed Swim Lane was part of a fraudulent
7 scheme, but Thomas testified he was on the design team with
8 lots of others. He says, yes, I was on the original kind of
9 design team that was coming up with ideas how to improve
10 efficiency. Thomas testified that it was 10 or 15 people on
11 it. Price testified there was a large group of people on it.
12 Boland testified that High-Speed Swim Lane was a collaboration
13 bringing the best people together. Boland further testified
14 that he thought Hustle was a great design. Let's look at slide
15 12.

16 "Q. What was your understanding in the summer of 2007 of how
17 the Hustle would work?"

18 Look at these words as he lived it.

19 "A. So the Hustle was great. It was a great design. The idea
20 was well, was well thought out. And our opinion was this, this
21 could work."

22 He further says Hustle's intent. Government says
23 fraud. Here is the man that lived it. "Hustle's intent was to
24 have a separate swim lane for loans with reduced documentation,
25 and therefore those loans would not be hung up behind other

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Summation - Mr. Sullivan

1 loans that required heavier documentation."

2 Isn't that what all the witnesses said about this
3 process? Yes. Fantastical different worlds.

4 He further said, let me continue with that slide 12.
5 "The idea of a High-Speed Swim Lane is that if I've got a very
6 difficult loan with a lot of documentation, I might take a
7 majority of my day working on that one loan. While a loan with
8 less requirements sits still and doesn't get a chance to move
9 ahead." Boland speaking. Government witness. "The theory
10 would be if we put all of the easy loans into one lane, or not
11 easy, but all of the less complicated loans in one lane, they
12 would then flow and the others would, you know, be in the
13 normal process. So in theory that flow had merit."

14 Thomas, the government witness, testified the Hustle
15 process was to move loans more quickly. We felt like those
16 loans could move more quickly because they didn't need manual
17 underwriting.

18 Thomas again: CLUES determined that it was an
19 acceptable quality loan based on the information that was put
20 into CLUES so you didn't have to redecision the file. Thomas
21 testified that he supported the efforts to become more
22 efficient.

23 You know, by the way, I don't know, I guess I might
24 not understand this, that's up to you to decide it, I guess,
25 but was the government today suggesting that Cliff Kitashima

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Summation - Mr. Sullivan

1 and Greg Lumsden were involved in this fraud? I don't know. I
2 think they were. You saw Mr. Kitashima. Laughingly suggesting
3 he didn't care because he is about to retire. Probably worked
4 40 years. Now the government calls him a fraudster? What is
5 this about? Just do that? If that was the case, and I don't
6 know whether I heard it correctly. If it was the case, then
7 I'll note to you that Mr. O'Donnell -- Mr. Thomas had great
8 respect for those two gentlemen.

9 Think about this now. Government witness testified in
10 this court, two of them, that they had -- I'll read you the
11 testimony.

12 "Q. I take it had you high regard for Mr. Lumsden.

13 "A. Not always the decisions he made, but yes. I found him --
14 I respected him.

15 "Q. In fact, you had a very good relationship with his boss
16 Mr. Cliff Kitashima?

17 "A. I did."

18 Then Mr. O'Donnell in the memo that he did not send.
19 One memo in the case he never sent, there is no date on it. He
20 says, he wrote in that memo: I have enormous respect for both
21 you -- he is writing to Kitashima -- and Greg, and have learned
22 a great deal working under the direction and support of both of
23 you.

24 Could you possibly say that to a person that you
25 thought was involved in a fraud? How far can we be pressed in

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Summation - Mr. Sullivan

1 this case to find fraud when there is none? It is counter to
2 everything you've heard, every document you have seen.

3 How about Boland's testimony? He was asked about loan
4 processors.

5 "Sir, do you know whether certain loan processors at Full
6 Spectrum Lending between '07 and '09 had underwriting
7 background?

8 "A. Do I know if they had background?

9 "Q. Yes, sir. Whether there were certain of the loan
10 processors that had underwriting background.

11 "A. Yes."

12 You didn't hear one word from the government about
13 that in opening or closing that in fact there were underwriters
14 there. They want you to believe they were just clerk, idiots,
15 didn't know what they were doing. Untrained. Talk about
16 painting a picture that is horribly unfair. Not only to you,
17 but to them. The decent people, the people that came in here.
18 You heard the people that came in here, Mrs. Flores, mother of
19 four kids, travels 3,000 miles to present herself here in this
20 courtroom. A woman of substance. A woman proud to work for
21 Bank of America. Told you about her job. About her training.
22 That's what she testified about. Acknowledges she was an
23 underwriter and people worked for her. She put a circle on the
24 chart.

25 The government somehow suggests that Hustle was a

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Summation - Mr. Sullivan

1 fraud because it relied on CLUES instead of human underwriters.
2 But Mr. Thomas himself wrote on December 2nd, December 19,
3 2007, the following. Slide 15, Alex, please. We hear this.
4 It seemed to be almost wrong to say CLUES is the underwriter.
5 There is a meaning for things said in the industry. Look what
6 he writes. This is Mr. Thomas. CLUES is the underwriter. We
7 should be clear that there is no approval of these PCA files.
8 The underwriter branch office manager or loan specialist do not
9 approve these files. CLUES does.

10 The government claims it is an indication of fraud
11 that Countrywide would allow loan specialists to clear CLUES
12 conditions before they were funded. But in August 30, 2007,
13 Thomas wrote he wanted loan specialists to clear CLUES
14 conditions.

15 Slide 16. He writes in there: I don't think the loan
16 specialists and underwriting roles should be separated.
17 Further, when both do their jobs separately, we've seen delays
18 and missed opportunities. What Hustle can bring with a
19 combined role and skill set is the ability for the loan
20 specialist to use underwriting specialists to clear conditions.

21 Wasn't it one of the indices of fraud that loan
22 specialists should not be clearing conditions? And that's what
23 he writes in here. He wants them to clear conditions.
24 Mr. Thomas goes on in his testimony. He says that quality
25 assurance was kind of an internal thing. This is an internal

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Summation - Mr. Sullivan

1 thing. We might have expectations for what we thought it
2 might, should be, but there was nothing required at a certain
3 level.

4 "Q. Wasn't quality assurance focusing on the very process, the
5 steps that were taken along the way?

6 "A. The quality assurance was in-line quality assurance.
7 Which meant that it was before funding."

8 He went on to explain in the real world. He said you
9 would fix, obviously, you would fix the problems. He went on
10 to say the real intent was to look at issues in the process
11 that may cause larger issues down the road so you can correct
12 the problems. That's what quality assurance was for.

13 Mr. Thomas testified about the rebuttal process too.
14 This awful part of the case, rebuttal and sprint incentive. He
15 was asked -- slide 18, Alex, please.

16 "Q. And I take it this rebuttal process is an important part
17 of the function in order to have quality product, am I correct?

18 "A. Yeah. I would say that the rebuttal process was an
19 important final step to validate and ensure that the final
20 ratings were correct."

21 19, please, Alex. Look at this one. Thinking again
22 about the opening and the closing of the government suggesting
23 that the rebuttal process is rigged final QC scores. What did
24 he say?

25 "Q. What were quality control reports?

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Summation - Mr. Sullivan

1 "A. So we had a monthly routine to review defects and it was a
2 healthy routine. Nobody enjoyed it, but we looked at all our
3 defects and there could be multiple people involved in the
4 loan, so it didn't matter whether the loan officer made a
5 mistake, the loan specialist made the mistake or the
6 underwriter made a mistake."

7 How about this one. Slide 20. Still Thomas:

8 "Q. And did you express any opinion on the sprint incentive at
9 FSL?

10 "A. I was supportive of the sprint incentive. I designed the
11 metrics around it," He says. "I had to measure it so I
12 designed the metrics."

13 Can't we put something to rest in a case? Do we have
14 to hear about it as bad on opening statement and bad today?
15 How can it be bad today? That demonstrates to you the
16 credibility of the government in this case. How can you say
17 that? How can you look at a jury and say this is bad or an
18 indicia of fraud today after four weeks of taking all of our
19 lives in this courtroom to see the evidence. The evidence says
20 that it is perfectly fine and they thought it was perfectly
21 fine.

22 Look at this one. Thomas testified he helped design
23 the sprint incentive with Mr. O'Donnell. Mr. O'Donnell
24 testified it was his idea. His idea.

25 Question to Thomas: It was important enough for you and

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Summation - Mr. Sullivan

1 O'Donnell to recommend there actually be a bonus program." Oh
2 my God, a bonus program. "Bonus program for the work that you
3 were asking these 36 people to undertake, am I correct?

4 "A. That's correct. The concern was that the volume was so
5 high that there was this potential that they may not
6 effectively go through the rebuttal process just because the
7 volume was so high. You had a time limit to rebut these loans.
8 That's the reason for the rebuttal -- the incentive. They
9 wanted to tell people, work hard, you get extra pay if we can
10 deal with this quality control SUS findings."

11 Enough. These are their witnesses. These are their
12 four witnesses they brought from the company right there. If
13 only I had the courage to just sit down. Let you do your work
14 sooner. But I admit, I have to keep going.

15 Let me tell you something about quality now. I say
16 again I've been accused of making a false promise at opening.
17 I'm too old to think I can fool juries with false promises.
18 I've been in the rodeo before. Never say anything to a jury
19 that I can't prove.

20 The quality and the concern for quality in this case
21 jumps off of every document that you've looked at. You have
22 250 exhibits. If you want to go and have those 250 exhibits,
23 take another four weeks of your life and read every word of
24 them out loud in there, I'll be right here waiting for you.
25 Right in the corridor. Pacing, waiting for your decision. And

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Summation - Mr. Sullivan

1 as you read that, every document that you think is fraud, you
2 put in one pile, and every document you think is a genuine
3 concern and discussion about quality and how to get there, you
4 put in another. And you'll be like that.

5 Because you can read little clips and blurbs here and
6 there, but you want take away the ocean of concern, I use the
7 word overwhelmingly. I stick by it. I double it. I double
8 overwhelming if you read those documents.

9 People doing their job. Everybody has a little
10 different focus. The quality crew, they have their focus. The
11 production people, they have their focus. And that's how
12 people come together and do their business.

13 The government on the other hand calls the promise a
14 joke. They said that the division gutted safeguards, turned a
15 blind eye, they say quality assurance 90 percent were lemons.
16 They say that quality results showed 30 percent loans were not.
17 I don't know where the 30 percent comes from. On the figures
18 they have to deal with, 4.5, 9.8, 5.8, and the 9 figure,
19 they're right there in the record. That's what it is. You can
20 open the case by saying 30 percent, one in three. I guess you
21 can close the case saying one in three, but that's not what it
22 is.

23 Let's look at slide 35. This is a report. This is a
24 document from Freddie Mac. Freddie Mac by way is the victims
25 here, right? Victims. Every fraud has to have a victim.

DAM3BAN3

Summation - Mr. Sullivan

1 Fannie Mae, look what does it say. It says -- it's hard to
2 read. I guess you can read on your screen. This is their
3 report.

4 Underwriting satisfactory. That's what it says
5 November 15, 2007. That's their report. Talk about quality.
6 Let's see the quality from their perspective. They thought it
7 was satisfactory. CHL maintains solid controls over the
8 underwriting and appraisal management functions. Controls are
9 in place to monitor underwriter's performance, address
10 processing deficiencies, provide fraud control procedures,
11 provide appraisal review procedures, and ensure consistent
12 process through documented procedures. CHL's controls are in
13 line with its peer group and industry standards, which supports
14 a satisfactory rating.

15 This is the report of the victim. This is after a
16 five-day site visit on September 14, 10 to 14 in 2007. Right
17 in the midst of the so-called fraud.

18 Look, quality standards were in force from the top.
19 You saw the memo of Drew Gissinger. He emphasized the focus to
20 be on quality. They made fun of Jack Schakett coming here.
21 The number two man. I'm sure he just wanted to come and spend
22 a few days in New York for nothing. He came and testified to
23 this jury. He underscored how important quality was. He
24 underscored it. He testified that it was important. That's
25 what he wanted in his company. He said he wanted to be as

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Summation - Mr. Sullivan

1 accurate as possible. They wanted to ensure the controls were
2 in place to produce the best quality product. These two men
3 oversaw about 90 percent of the employees in this company.

4 Countrywide had many procedures and systems to achieve
5 quality.

6 Let's start with the way the Hustle project was
7 designed and implemented. Rather than just put a new process
8 in place, they put a design team together. The design team
9 included most everybody that would have input. Eventually the
10 process was pilot tested, because that's a reasonable thing to
11 do.

12 You know, Mr. Battany came here, a former Fannie Mae
13 fellow who had been in business for 21 years, and he was asked
14 this question:

15 "Q. If you knew that the persons who were processing these
16 loans and evaluating these loans at Countrywide were loan
17 processors as opposed to underwriters, would that have affected
18 your decision whether or not to purchase?

19 "A. No, it would not affect it."

20 That's the case, why are we still arguing about the
21 lack of underwriters? When in fact the underwriters were there
22 on the same teams.

23 Mr. Battany was asked further:

24 "Q. Why would it not have affected your purchasing decision,
25 Mr. Battany?"

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Summation - Mr. Sullivan

1 Takes us back to the different worlds we're in.

2 "A. Using processors to operate either CLUES or DU was common
3 in the industry. And Fannie Mae was aware of it, as I recall
4 bringing this to Fannie Mae's attention."

5 Remember that CLUES of course is that computer that
6 Fannie and Freddie actually checked, so that they know it's
7 similar to theirs. So if you put a loan into the CLUES
8 computer, it comes out with the same kind of answers as if you
9 put it into their own computers. They're calibrated -- had --
10 they've got it programmed so Fannie and Freddie are satisfied.
11 You heard that from Battany. He said that CLUES loans did
12 conform, he said that Fannie Mae approved a special variance
13 for Countrywide to allow CLUES loans to be delivered to Fannie
14 Mae. He said from his experience, with respect to managing
15 Countrywide, the loans were eligible for the contracts and the
16 Fannie selling guide plus any variances. That's the way it
17 worked.

18 Many loan processors were former underwriters. By the
19 way, Ed O'Donnell identified a number of them. Let's see slide
20 number 56. When he testified, he actually identified, do you
21 remember that little interesting story about when he came to
22 Countrywide, he brought some people with him? He brought some
23 people with him that he respected at his former company, and
24 they came because they liked him and they worked in the
25 company. He brought them, we assume, because he thought that

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Summation - Mr. Sullivan

1 they were qualified. Not a government view five, six years
2 later that maybe the people working on these things were not.
3 He, Mr. O'Donnell, circled the underwriters that he himself
4 knew on this chart, as you may remember the testimony in order
5 to indicate which ones were former underwriters.

6 Also interesting to note, ladies and gentlemen, that
7 so much is made in the government argument, both in opening and
8 today, about the quality assurance program. Don't forget the
9 testimony that the quality assurance program was actually
10 started in order to monitor this Hustle program. That's why it
11 was there. In order to see the Hustle program was functioning
12 properly and consistently. The quality assurance program was
13 not dictated by corporate headquarters, and it was not dictated
14 by Fannie Mae or Freddie Mac.

15 (Continued on next page)

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25

DAMTBAN4

Summation - Mr. Sullivan

1 MR. SULLIVAN: By the way, do you remember Mr. Battany
2 testified about the audits that were -- he said basically these
3 quality assurance things were of little importance to them. He
4 didn't focus on those. Those were something that the company
5 focused on to better their process. His focus was always on
6 the end process.

7 Now I want to take a minute here in terms of quality,
8 since we're talking about quality, and focus just a little bit
9 on something else that was brought today up before we break for
10 lunch in about ten minutes, and is about the doorman loan that
11 was talked about.

12 This exhibit here, PX, Government Exhibit 433, is the
13 loan file. You will see it in the jury room, I guess you might
14 have to take four months to read that, both sides of the page,
15 loan file. This is the loan file to the doorman.

16 In opening, a lot was made out of the fact that this
17 loan file was scandalous, that it showed you how bad the Hustle
18 program was. The opening went something like: The borrower
19 earned \$13,000 a month as a doorman, but some basic
20 underwriting would have found, looking at salary.com, that a
21 doorman in that area of the country wouldn't have been making
22 more than \$6,000 a month. If they had done some basic
23 underwriting in terms of getting a verification of employment,
24 they would have found that this actual borrower only earned
25 \$5,000 a month.

DAMTBAN4

Summation - Mr. Sullivan

1 Oh, my goodness this is an attention grabber for the
2 jury. It's an attention grabber.

3 When assessing the quality of the government's
4 evidence, in addition to assessing the fact that there is none
5 about fraud, you should be aware that sometimes the evidence
6 that the government introduces is just plain wrong. Probably a
7 mistake. Just plain wrong. This is one example of just plain
8 wrong.

9 In order to talk about this file, they brought two
10 witnesses. The first was Maria Brewster. She testified about
11 what the number was, slide 50. Let's take a look. Finding the
12 number of where this file was done, this file, the testimony
13 was loan number 188677894 and the Countrywide processing branch
14 was 6114. They then brought Lars Hansen to testify this loan
15 was in the group of Hustle loans that he had one of the 28,000.
16 He said he confirmed it.

17 But I have shocking news for you, this is not even a
18 Hustle loan. This was brought to show you: Oh, isn't the
19 Hustle program bad? Not even a Hustle loan. Just a mistake on
20 people's part, but it says something about the quality of the
21 evidence, I guess, of the SUS, severely unsatisfactory. It was
22 not produced by a Hustle branch.

23 How do we know that? The branch number is 6114. It's
24 a field branch. Field branches do not produce Hustle loans,
25 only Central Fulfillment branches produce those loans.

DAMTBAN4

Summation - Mr. Sullivan

1 Let's take a look at slide 52. It says right there
2 the Central Fulfillment process replaces the existing NCS model
3 for the sales volume generated by and processed within these
4 centers only. Look at the last sentence. Field branches and
5 other NCS branches will continue to use the existing model. In
6 other words they didn't use the HSS model.

7 Now Mr. Thomas came and he testified, he said that
8 field branches did not process Hustle loans. On page 11 of
9 Plaintiff's Exhibit, their own exhibit, 232, that is slide 53,
10 it shows you that 6144 is listed.

11 On Plaintiff's Exhibit 232, this document, 232 is
12 worth a look when you're in the jury room, if you can remember
13 it, because it's so boring. It's just a list, page after page
14 of a list. It was faxed by Mr. Thomas, according to his
15 testimony, right to the U.S. Attorney's Office on January 9,
16 2013 because they wanted to find out which were Hustle loans
17 and which were not Hustle loans. It goes from page 03 here to
18 page 15 in the back. As you read down it, branch fulfillment
19 is a field office, Central Fulfillment, it says, and it lists
20 numbers that's where the Hustle loans were prepared.

21 The most boring cross-examination of the whole case
22 was my examination of Mr. Thomas on this letter. I went
23 through it page by page. You must have thought I was nuts. It
24 was first thing in the morning. You couldn't have possibly
25 figured out what it was. And I asked him this question:

DAMTBAN4

Summation - Mr. Sullivan

1 Everything below that, for every page for the rest of the
2 document, page 8, page 9, page 10, page 11, page 12, page 13,
3 page 14, page 15, page 16 are all field operations, am I
4 correct? Field operations do not produce Hustle loans. This
5 is not a field operation, it is not a Hustle loan.

6 So you have been lingering for four weeks thinking
7 about oh, my goodness, the doorman's 13,000, how could the
8 Hustle project be so bad that it let that go through? Well,
9 mistakes are made, but it's not a Hustle loan. By mistake,
10 we're led to believe that it was.

11 If there's any doubt whatsoever, Mr. Anthony Ho, the
12 MIT grad with a facility for numbers confirmed it when he was
13 asked: What's the branch number? It's a bunch of zeros
14 initially, but 6114.

15 "Q. Was this branch number among the branch numbers you
16 identified as Central Fulfillment branches?

17 "A. No."

18 Meaning it's a field branch. Field branches cannot
19 produce Hustle loans.

20 Sometimes mistakes are made even under the best
21 circumstances. You know, what we have here is a theory in
22 search of evidence, and sometimes you can be too eager. But
23 this is just one file. What about the evidence that was relied
24 upon by their experts, which we'll get to after lunch, when
25 their experts are relying upon 28,000 Hustle loans? In fact,

DAMTBAN4

Summation - Mr. Sullivan

1 they're wrong by about 17,000. We'll talk about evidence and
2 how a jury can rely on that. We'll see that after lunch, and I
3 think it's exactly my time.

4 THE COURT: All right. Ladies and gentlemen, so we
5 will take an hour for lunch and reconvene at 20 minutes before
6 2.

7 (Jury not present)

8 THE COURT: All right. Anything that counsel needs to
9 raise to the Court?

10 MR. ARMAND: Yes, your Honor, there were a number of
11 statements by defense counsel that went into the mental state
12 of employees of Countrywide who are not alleged to have
13 fraudulent intent in this case. And it was our understanding
14 from the Court's rulings yesterday that was something that was
15 off limits with regard to Mr. Barnett who said --

16 THE COURT: What I said yesterday was that I didn't
17 want statements about state of mind unrelated to the Hustle
18 program. Now what you are referring to, which was not part of
19 my statement yesterday but did come up earlier in the case, was
20 I sustained evidentiary objections to some but not all
21 questions to persons other than the three whose intent is
22 directly in question as to their states of mind. There were
23 exceptions to that in particular circumstances. So I take it
24 your reference is not to what I said yesterday, which
25 apparently you misunderstood, but to those earlier rulings.

DAMTBAN4

Summation - Mr. Sullivan

1 But the argument that Mr. Sullivan was making, as I
2 understood it, was that these people who were working on the
3 Hustle loan wouldn't have been doing the kind of work they did,
4 such as checking quality and so forth, if they had thought they
5 were really involved in a fraud. I think that's not precluded
6 by any ruling of the Court, and I think that, within limits, is
7 an argument that can be made. So I overrule the objection.

8 Of course, I was as surprised as anyone by
9 Mr. Sullivan's constant referral to himself as a cowardly wimp
10 who didn't have the courage to sit down after making varying
11 arguments. This is not the Sullivan of reputation, but I have
12 a feeling that it was rhetorical.

13 In any event, anything else?

14 MR. ARMAND: No, your Honor.

15 THE COURT: Very good. We'll see you all at
16 2 o'clock.

17 (Luncheon recess taken)

18 (Continued on next page)

DAMTBAN4

Summation - Mr. Sullivan

1 (Jury present)

2 THE COURT: Just so you know the line-up for this
3 afternoon, ladies and gentlemen, bank counsel have another
4 hour, we will then take a very short ten-minute break, then
5 Ms. Mairone's counsel will have an hour, and then we'll take
6 another ten-minute break, and then we'll hear from the
7 government on rebuttal. So there will be two breaks, but they
8 will be short, to clue you into that. Let it not be said that
9 I don't give jurors a break.

10 So, counsel.

11 MR. SULLIVAN: I was so excited to start today that I
12 forgot to join with counsel in thanking you. We know what
13 turmoil this creates, and we appreciate your patience. Also
14 appreciate your humor and the tip of the hat to the relief
15 pitchers.

16 Let me focus now, as I said I would before the lunch,
17 on what we call the number of loans that the government is
18 focusing on. As I said, this case is very narrowly focused.
19 The government focused it on the High-Speed Swim Lane loans.
20 And of course, the issue comes up: How many? The government
21 says 28,000. The fact of the matter is they're way off, and
22 the reason they're way off you is will see from Exhibit 232,
23 which lists all the branches that create High-Speed Swim Lane
24 loans, only the only ones that create the High-Speed Swim Lane
25 loans are the branches called Central Fulfillment.

DAMTBAN4

Summation - Mr. Sullivan

1 As you might imagine, we talked about Central
2 Fulfillment. That's what -- that's where the process was. It
3 was not in the field branches. When you get a chance to look
4 at this exhibit in the jury room.

5 Perhaps could you put that up, 232 for a second, slide
6 48, just to give you an example, when you look at the pages in
7 it, you can go starting at page 11, for example, pick any page,
8 up on the top left hand corner it says "Field."

9 I could point out field, this is Central Fulfillment
10 and that's field. Go to page 11 or 12 if you could and look at
11 the top left, any page that has the word "field" on it, and
12 most of those pages do at the back. They were numbered in the
13 examination, none of them produced High-Speed Swim Lane, and
14 the problem was the government took this and they counted all
15 of them, they counted all the field branches where in fact none
16 of the field branches produced High-Speed Swim Lane loans.

17 To be exact, the government opened by saying there
18 were 30,000 loans, then they had experts testify there were
19 28,882, and the fact that it was so high is because they
20 included loans produced by the field branches and they should
21 have included only the loans produced by Central Fulfillment.

22 So in fact, there are 11,481 High-Speed Swim Lane
23 loans. So the government is essentially off by 17,000. That's
24 a lot of loans. So their experts come and use as a predicate
25 and testify the whole predicate for what they're saying is

DAMTBAN4

Summation - Mr. Sullivan

1 28,000, and the 165 million, that's predicated on 28,000 loans,
2 not 11,000 loans. So obviously there's an extraordinary
3 difference between the two.

4 I remind you by looking at slide number 47 that DX31
5 specifically says field branches and other NCS centers will
6 continue to use the existing model, not the new model, the
7 High-Speed Swim Lane model. One place that you find that. On
8 Thomas' cross-examination he made it clear that it was Central
9 Fulfillment branches where the Hustle loans were processed. He
10 was asked that question, and he gave the answer: Correct.

11 Of course, their experts relied upon the larger
12 figure. Another confirmation of the fact that it's 11,000 is
13 found in the testimony of Anthony Ho, who is a Bank of America
14 employee, grad of MIT, who seemed to like numbers more than
15 most of us. And his testimony is reflected on slide number 49
16 which is Exhibit 1928. There you'll see the number 11,481. He
17 actually worked with the documents. Unlike the government
18 experts he looked at the documents, he looked at the documents,
19 counted them up, and of course knows that field operations do
20 not produce Hustle loans.

21 Now for one more moment, let's look at -- the
22 government's opening statement today about experts and talked
23 about Dr. Holt and Cowan, and I remind you the predicate of
24 what they did is predicated on that population. But the other
25 interesting thing is that our expert, Mr. Broeksmit, had a very

DAMTBAN4

Summation - Mr. Sullivan

1 limited assignment. Their expert essentially did this, he
2 looked at 383 loans and he found a problem with 185 of them.
3 So if you could think of that, in other words, he examined and
4 looked at 343 and found a problem with 185, and he came in and
5 told you missing appraisal licenses was 41 and so forth. Let's
6 put that chart up there for a minute, 57. This is basically
7 their expert's tally, so to speak.

8 And what did our expert do? He wasn't assigned to
9 look at all the files to determine whether they were quality
10 files. He has one narrow assignment: Look at the expert,
11 Mr. Holt, and when he said he found problems in 185 files,
12 would you look at that and see if he's right. And his
13 testimony, as you may recall, was that he found that he was
14 wrong 154 times. So if you recall his testimony, just looking
15 at this chart, he said, for example, that he described some of
16 the work he did. He said one loan was missing a required tax
17 form, according to the government expert, but it was actually
18 in the file. That's what he did. If he had a compliant about
19 what was in the file, he would go back and see if he could find
20 it in the file.

21 Another instance was there was one file was missing
22 pay stubs, so the government expert said oh, well, that's a
23 deficient file. Now along comes Mr. Broeksmit, he looks in the
24 file and finds pay stubs.

25 To give you an example, Mr. Holt, the government

DAMTBAN4

Summation - Mr. Sullivan

1 expert, said 59 of the loans were missing mortgage insurance,
2 and that's what his tally is. Missing mortgage insurance.
3 Just as an example, you could see it up there as a second
4 column, 59 times, but our expert said it didn't have to be in
5 the file, it was located in a central place in Countrywide, we
6 call them up and get on the computer and all the information is
7 there, not in the file. That's what the experts were
8 disputing.

9 And I point out to you that the predicate is incorrect
10 for their experts. By the way, one of the interesting things
11 that presents in looking at files that are as thick as this,
12 there can be a lot of area for human error on the part of loan
13 processors, on the part of people that look at them five or six
14 years later, someone thinks there's a document -- not a
15 document in the file and in fact there is a document.
16 Obviously takes a lot of time and effort to go and track these
17 things down.

18 Once again, returning to the issue of quality -- your
19 Honor, would you remind me again what time I started?

20 THE COURT: Yes, 1:53.

21 MR. SULLIVAN: 1:53. Maybe could you give me a
22 five-minute warning?

23 THE COURT: Sure.

24 MR. SULLIVAN: Thank you. When we talked about
25 quality this morning we were talking about the quality

DAMTBAN4

Summation - Mr. Sullivan

1 assurance and we spoke briefly about errors in the quality
2 assurance by the auditors, which all the witnesses acknowledge.
3 And we talked about it as the high numbers that government uses
4 and wants to leap from there into the final end product.
5 They're very, very different animals, so to speak. All
6 witnesses testified consistently that the quality assurance
7 process is focusing on the process itself, and the quality
8 control is focusing on the end product. That's where you get
9 the corporate quality control looking at the files, and that's
10 where you get the rebuttal process if there's an SUS finding.

11 And as Mr. Kitashima testified, as other witnesses
12 did, QA is not an indication of quality. It could went be
13 clearer. It's not an indication of quality from the standpoint
14 of investment grade the. It really is to determine whether the
15 process is being followed. That's what I believe, and I ask
16 you to be careful of when you focus on the government's
17 argument. They tend to conflate quality assurance and those
18 high process figures with the fact that oh, my goodness, oh,
19 how could it have a quality product if it has those issues in
20 the process itself? But it could be corrected, and that's why
21 the end product bears no resemblance to the high numbers.

22 Now the focusing for a minute and switching from
23 quality assurance to quality control, we have already talked
24 about this a little bit, quality control measures the end
25 process. That's the SUS finding. During the government's

DAMTBAN4

Summation - Mr. Sullivan

1 argument you heard them say that corporate QC findings was
2 30 percent of the Hustle loans were not investment quality, but
3 Countrywide undertook to make it look like it was lower. These
4 allegations are flatly rejected by the evidence. The QC review
5 evaluated sample loans that were already funded to determine
6 whether they were eligible for sale. If a loan was found to be
7 SUS, Countrywide personnel would then have the opportunity to
8 study the loan and to take steps to correct it. And that's
9 what was done. That's what the rebuttal process is. That's
10 what the witnesses call a healthy process. Boland agrees with
11 it, Thomas agrees with it, and they testified consistently with
12 that throughout.

13 Now Mr. Battany, the Fannie Mae person who has the
14 most contact with Countrywide, and said he virtually was in
15 contact with them every day. He was asked this question: Were
16 you aware of the various points in time in 207 and 208 with
17 regard to Countrywide's SUS rates? Yes, I was.

18 Now these results, as you remember from the chart that
19 you have seen many times were 5.5, 9.8 and 4.4. And he
20 basically said that that would not have had an impact when he
21 was purchasing the loans. The question was this to him: With
22 respect to the SUS rates for the division for the fourth
23 quarter of '07, the first quarter of '08 and the second quarter
24 of '08, as purchasing agent, if you had known these SUS rates,
25 would you have continued to purchase loans from Countrywide?

DAMTBAN4

Summation - Mr. Sullivan

1 Answer: Yes.

2 The rates are there, they're the result of the
3 corporate quality control process, they're recorded, they're
4 there to see, and he said it would not have affected him. Why?
5 Because they know that there's a certain defect rate industry
6 wide, and the Countrywide rate is within it. Then he went to
7 say, for example, that Fannie Mae does not expect every loan to
8 be perfect.

9 Let me switch for a moment to training. The
10 government mocks the, quote, clerks. It suggests that they had
11 a bunch of unskilled people down there on the front line, the
12 company liked it that way, that underwriters weren't on the
13 scene and so forth. That's far from the truth. The company
14 made an extraordinary effort to train people and the teams were
15 made up, as you have seen through some of the witnesses, with
16 persons who formerly were underwriters. Mr. Porteck was asked
17 about classes, he said these were the classes, he actually
18 listed them. You may remember this, slide 39, he went down
19 this list of classes and said I took them and I had my people
20 take them.

21 Now obviously, with respect to quality, CLUES is one
22 of the biggest, most powerful tools that the company used to
23 guarantee quality because it's programmed in a way that's
24 satisfactory to Fannie and Freddie. They check the contents of
25 it, make sure that it reacts to a particular loan the way their

DAMTBAN4

Summation - Mr. Sullivan

1 own system would react. So CLUES in itself is a piece of
2 equipment or a tool, a computer program that is very
3 sophisticated that the company uses to assure quality, because
4 when loans go in, the computer says this is either acceptable
5 with conditions or they refer it to an underwriter.

6 In addition, you may remember that the COO of the
7 company came and described SASE, SASE, Signing Authority
8 Signature Enforcement, a process which is really designed to
9 make sure that the right person is doing the right job. As he
10 explained, we want our underwriters to be working on the most
11 complicated loans. We don't need people that are underwriters
12 working on every loan. And that's why you saw in the evidence,
13 and you see it again in the jury room, these charts, level one,
14 level two, what they can do, can they authorize a million
15 dollar loan, and exactly what their authority is.

16 What does that show you? Someone goes to a lot of
17 effort to put those kind of controls in. It's one of many,
18 many examples of quality control that the company utilized
19 during this period on these particular loans. And to give you
20 an example, if you look at slide 58, which looks very similar
21 to the one I had in opening, these are some of the -- this is
22 just a demonstrative, you don't have this in the jury room,
23 it's a demonstrative, it shows you month by month what was
24 done.

25 All of these consistent efforts to do every one of

DAMTBAN4

Summation - Mr. Sullivan

1 these kinds of things, to add coaches, to have a new stated
2 income responsibility, job data, to have a new income
3 calculator, to quadruple the number of random audits, all of
4 these things are indications of the quality right through from
5 December '07 down through May of 2008. Why would they be doing
6 these thing if they did not want quality product? There's no
7 explanation for it. And the fact is quality was achieved. If
8 we look at the evidence in the case, they measure quality. And
9 here is the chart, put up slide 41. This is the one we've been
10 referring to. If you could blow it up.

11 These are the final scores, 5.4, 9.85 and 4.4. Those
12 are the basic quality range. And by the way, yes, 9.8 is a
13 little high, and that's why they took aggressive action to
14 change various things. But Alex, if you could go back one
15 quarter, there's actually a time on there where they have
16 13 percent on this chart right there. The Hustle program was
17 not even in effect then. This happens in business sometimes,
18 they see a spike and they correct it, and that's what the
19 evidence shows here.

20 The bottom line, when it comes to their own quality
21 scores, they know the company wasn't perfect, but it was
22 clearly acceptable to their Fannie and Freddie buyers. Quality
23 was within the range of expectations. As I showed you one
24 point it was 9.8, they didn't like it, and they made
25 corrections. That's what a company does that's intending to

DAMTBAN4

Summation - Mr. Sullivan

1 have good quality.

2 The fact of the matter is that all of these documents,
3 and you can pile them up, if you just take the documents and
4 spent a little time reading them and see what they're
5 attempting to do in making corrections, changing quality,
6 putting in controls, for every focus that they have on quality,
7 if you gave a dollar to Mr. O'Donnell, he wouldn't need the
8 million six five because there are literally hundreds of
9 examples in those records that show the effort the company is
10 making to make its product a quality product.

11 Now I want to talk to you for just a moment about --
12 would you put up transcript 26, please. This is testimony from
13 Freddie Mac's Mr. Tanabe, and it's very instructive, and it
14 tells you something about the standards. Counsel for the
15 government indicated that there was a four percent standard in
16 the industry defect rate. That's what you heard this morning,
17 four percent. Here's what the people that actually work in the
18 industry tell you.

19 This was the testimony of Mr. Tanabe: In the 2007,
20 and '8 time period, Mr. Tanabe, what was the industry standard
21 for that NAQ number? Reminding you that that's non-acceptable
22 quality.

23 Answer: I can speak to what Freddie Mac's average at
24 that time frame was.

25 Question: What was that number, sir?

DAMTBAN4

Summation - Mr. Sullivan

1 Answer: 18 to 20 percent.

2 18 to 20 percent, ladies and gentlemen. That is from
3 the representative of the so-called victim. The statistics
4 that we have in the company are much less than that. You have
5 just seen them on the board.

6 Forget Freddie for a minute and let's go to Fannie,
7 transcript 27. Here's the testimony from Mr. Sobczak, a
8 government witness, Mr. Sobczak: Are you familiar with the
9 national significant findings rate? Each called a little
10 different thing. Are you familiar with the national
11 significant finding rate for 2007 and '8 time period?

12 Answer: Yes, I am.

13 What is the rate, sir?

14 It's approximately 25 percent, give or take a couple
15 of percentage points.

16 Can you explain to us what that means?

17 Answer: A significant finding, as I mentioned, is a
18 potential grounds for Fannie Mae asking a lender to repurchase
19 a loan that they delivered. So 25 percent would mean that
20 approximately one in four loans delivered to Fannie Mae had
21 some flaw, or should Fannie Mae choose, it could choose to have
22 a lender repurchase that loan.

23 Question: And that rate is across all lenders?

24 Answer: National significant findings rate, yes.

25 Question: So is that essentially like an industry

DAMTBAN4

Summation - Mr. Sullivan

1 standard rate or something like that?

2 Answer: That is Fannie Mae, that's Fannie Mae's rate
3 for the deliveries it received.

4 So how do you weigh that with an allegation by the
5 government? There's no evidence that we were one in four, or
6 18 to 20 percent. FSL loans were better than that. So what
7 are we talking about here? Where's the fraud? Where's the
8 evidence of fraud?

9 Every one of GSE witnesses, and they called four or
10 five of them, testified about the real world in a positive way
11 regarding the company. Counsel for the government said this
12 morning that Fannie and Freddie could not inspect their loans,
13 they had to rely on Full Spectrum Lending. That's not the
14 testimony. You heard detailed testimony about how the GSEs,
15 Fannie and Freddie, come on site, see what is going on, they
16 randomly check loans, they talk about four different ways that
17 people check loans. One was the NAQ process, a second was the
18 LP emulator, the third was the collateral models, and four was
19 the performance of loans.

20 When the government said that they could not inspect,
21 they had to rely upon Full Spectrum Lending, that's contrary to
22 everything you heard from the witness stand. What are these
23 people doing over there? They're not just opening mail. They
24 have systems and people that --

25 MR. CORDARO: Objection, your Honor.

DAMTBAN4

Summation - Mr. Sullivan

1 THE COURT: I'm a little concerned about this. The
2 jury should understand, while this may be relevant for
3 impeachment purposes, Fannie Mae and Freddie Mac are not on
4 trial in this case in any respect. The question is not what
5 they did or failed to do at all, it is purely a question of
6 what the defendants did or failed to do.

7 MR. SULLIVAN: Yes, your Honor, and I was just
8 addressing counsel's point and that was my only point.

9 THE COURT: Thank you.

10 MR. SULLIVAN: Thank you.

11 I would like to address a couple of things about what
12 Mr. Battany said. He was here testifying and he was asked the
13 following question: You mentioned, Mr. Battany, conforming to
14 Fannie Mae guides. Did CLUES accept loans that conformed to
15 Fannie Mae guides?

16 Answer: CLUES loans did conform. Fannie Mae approved
17 a special variance for Countrywide to allow CLUES loans to be
18 delivered to Fannie.

19 By the way, there's a lot of talk and conversation in
20 this case about stated income loans. What have we learned
21 about stated income loans? It was a product -- and I must
22 confess to you it's an unusual product. It was a product in
23 which a borrower could actually state the income, and the rules
24 set by Fannie and Freddie were that you could not ask for
25 documentation such as pay stubs or tax returns. Countrywide

DAMTBAN4

Summation - Mr. Sullivan

1 didn't make the rules, but they had to follow them. And so
2 there was much talk by the government about allowing stated
3 income loans to go through the Hustle process.

4 Interestingly enough, their expert witness, guess how
5 many stated income loans he found a problem with? 13. I don't
6 know what the significance is except 13 in all that he looked
7 at were stated income loans he found a problem with. You heard
8 testimony that some of the experts in the field from both the
9 company and from Fannie Mae and Freddie Mac said that stated
10 income loans were back existing around the '90s, and they
11 performed well for a long period of time. They started to
12 perform badly during the economic crisis in '06, '07 and '08,
13 at which time you will find that Countrywide and Full Spectrum
14 Lending began on a regular basis to tighten up the controls.

15 A lot of things you will see in the documents focus on
16 tightening the controls, and mainly what they're focusing on is
17 well, if the borrower doesn't state the income, and you cannot
18 ask them to provide documentation for the income, how do you go
19 about checking? And that's where you see in the evidence
20 several things developing, income calculators, systems to test
21 it, looking up something on dot com that will show you what a
22 typical doorman makes, typical anybody makes, and you will see
23 through the documents, many of the documents dealing with that
24 kind of an issue in stated income.

25 The fact of the matter is stated income is simply a

DAMTBAN4

Summation - Mr. Sullivan

1 loan that is stated income. If you do require the borrower to
2 provide something, it's not a stated income loan. Fannie and
3 Freddie set the market for that product.

4 Now also of interest in terms of the government's
5 closing today, they still are talking about turn time and other
6 contests and so forth. Let's remember what Mr. Battany
7 testified about. For example, he was asked the following
8 question: In 2007 and '8 time period, as a purchasing agent,
9 would you have approved the purchase of loans that were derived
10 from a loan origination process designed to decrease turn time?
11 This is one of the sins I think that the government keeps
12 talking about, turn time, speed.

13 His answer is: Yes, I would have approved those
14 loans.

15 Question: Why would you have approved those loans
16 Mr. Battany?

17 Answer: I would have viewed that to be a positive for
18 the mortgage industry and borrowers to have a more efficient
19 process. And I was personally aware that the mortgage loan
20 process has many days in the timeline where loan files just sit
21 and sometimes take days or weeks.

22 You see the difference between being on the 14th floor
23 of a New York building and having lived 22 years in the
24 mortgage industry 3,000 miles from here? He's in the real
25 world. Up here we're talking about two different worlds,

DAMTBAN4

Summation - Mr. Sullivan

1 lawyers looking at what happened five or six years ago and
2 second guessing people on the front line.

3 Mr. Battany is further asked: If a lender was using a
4 loan origination process that gave processors a bonus based
5 upon reduced turn time, would you have continued to purchase
6 the loan?

7 Answer: Yes.

8 He goes on. Question: Would Countrywide, setting
9 funding goals for employees -- for its employees have affected
10 your purchasing decisions in 2007, 2008 time period?

11 Answer: No.

12 Question: Why not?

13 Answer: It was typical in the industry.

14 So we come to court here and we hear about contests
15 and poker and other things as if it's a dirty part of a
16 business. The fact of the matter is some businesses have those
17 kinds of corporate employee benefits. Mostly fun, certainly.
18 What do we expect? Do we expect -- is there the suggestion
19 that for an Outback \$50 certificate that somebody out there in
20 California five years ago was sending millions of dollars of
21 loans out to borrowers because they were hungry and wanted a
22 certificate? Is the Bloomin' Onion worth that much nowadays?
23 Why? What kind of unrealistic assessment is that? Why is that
24 wrong? Why is that?

25 You know why? You know why? Because there's no

DAMTBAN4

Summation - Mr. Sullivan

1 evidence of fraud, and you have to reach for things like that
2 in a courtroom. You reach out there and you say to a woman
3 that came here, Ms. Flores, well, what about this horse race,
4 this poker game? She was flabbergasted. You could see it on
5 her face. She said I don't even know how to play poker. That
6 was a quote.

7 You see the difference between living life five and
8 six years later? She thought this was all about her work and
9 her team and her people and doing her job, and she's getting
10 questions about poker this kind of craziness. It happens only
11 when you don't have evidence and when you have a theory and
12 you're searching for evidence. And that's what this case is
13 about, and sometimes you see it in the littlest things like
14 that that says so much about the case. That says no case, that
15 says no fraud.

16 I didn't finish Mr. Battany's answer I stopped in the
17 middle. He said, answer: It was typical in the industry.

18 "How do you know that," the question was.

19 Answer: In my 22 years at Fannie Mae, I worked with
20 probably every major lender in the western United States, and
21 it was very typical behavior for mortgage lenders.

22 And maybe the best of all: If you knew that persons
23 who were processing these loans and evaluating these loans at
24 Countrywide were loan processors as opposed to underwriters,
25 would that have affected your decision whether or not to

DAMTBAN4

Summation - Mr. Sullivan

1 purchase?

2 You heard this this morning. Answer: No, it would
3 not affect it.

4 Question: Why would it not have affected your
5 purchasing decision, Mr. Battany?

6 Answer: Using processors to operator either CLUES or
7 DU, Desk Underwriter, was common in the industry. Fannie Mae
8 was aware of it, and I recall bringing this to their attention.

9 I want to talk to you briefly about stated income just
10 because there's been so much discussion of it. It must be
11 remembered that the GSEs and Countrywide testified that the
12 loans were common, that the rules were set by Fannie and
13 Freddie, they were produced to accommodate the borrowers that
14 wanted stated income loans. By the way, borrowers, as you
15 heard from one expert, who wanted stated income loans paid a
16 little more. Remember, there's a higher risk. People that set
17 risk prices associated with a loan, they charge a little more.

18 So people -- it doesn't matter if you and I were bank
19 presidents, maybe we wouldn't like those loans, but that's how
20 it was done five or six years ago. But it sounds like it's
21 some product we invented. We're just in the marketplace.

22 By the way, just to give you an idea, here's a
23 question that was asked. Question: Now when underwriting a
24 stated income loan, sir, were underwriters permitted to just
25 ask the borrower or the applicant to provide payment stubs or

DAMTBAN4

Summation - Mr. Sullivan

1 tax returns to verify the income that was stated?

2 The answer: No. They were not allowed to fully
3 document the income if it was stated.

4 Question: They were not allowed to ask for W-2s, tax
5 returns?

6 Answer: That's correct.

7 That's Mr. Schakett's testimony.

8 Stated income loans is just another product. The
9 government's theme is that the High-Speed Swim Lane was somehow
10 fraudulent in its creation and its operation. And they used
11 stated income loans, I guess, to say that somehow they didn't
12 belong in High-Speed Swim Lanes. But who permitted the
13 High-Speed Swim Lanes? Mr. O'Donnell did. He said it was OK.

14 So what conclusions do we draw from this whole stated
15 income issue? Does it show fraud? It simply shows Countrywide
16 handling another product. And by the way, when economic times
17 changed and when these loans started to show up defaulting more
18 than they had over the years, what did they do? They
19 recognized the problem, they discussed the problem to death,
20 they found solutions to the problems as much as they could,
21 changed things, they made changes all hand in hand with the
22 GSEs, Freddie and Fannie Mae participating with them.

23 And the problem -- eventually they decided not to have
24 stated income loans, but that was Fannie and Freddie's
25 decision. Once they make a decision we're not going to deal

DAMTBAN4

Summation - Mr. Sullivan

1 with that kind of loan, then obviously Countrywide can't
2 produce that kind of loan. So what do we have after four
3 weeks? I said we don't have fraud. So what do we have? What
4 does the evidence show? It shows men and women at work. And
5 there's this attitude, I guess, by the government that nothing
6 is good about the process or the men and women, I guess, no one
7 I guess did their job.

8 The government thinks that loan specialists or clerks
9 are not smart enough. They think tracking the numbers of loans
10 is bad. They think bonuses for line level employees is bad.
11 They think bonuses for senior people, sprint incentives, are
12 bad. They think rebutting the QC SUS findings is bad. They
13 think poker is bad, office contests are bad, leader boards are
14 bad, cards and gambling are bad, Outback Steakhouse gifts, very
15 bad. White on rice bad, but funny. Got to say that once in a
16 while. You have to laugh at some of this stuff. There's
17 material for Saturday Night Live, but the saddest thing about
18 it is we're in a fraud case and people, at least Rebecca
19 Mairone, and companies, are being charged with fraud by our
20 government.

21 So what does the real world show? Take all the
22 witnesses and assume good faith on the part of all the
23 witnesses, the government witnesses and so forth. Michael
24 Thomas, the risk analysis. He doesn't provide evidence that
25 there was fraud. And it was four things that we talked about

DAMTBAN4

Summation - Mr. Sullivan

1 today. Mark Barnett, PhD, designed it. Sidekick, Anson Gong,
2 another PhD who worked with him. Lori Peffer who she spent ten
3 years of her life focusing on CLUES. That was her assignment,
4 CLUES. Anthony Ho, the MIT fellow, comes and identifies the
5 loans looking at the documents, and you find that it's not
6 28,000, it's 11,000. Mr. Boland, government witness, thought
7 the process was a great design, a great process. Price had
8 little to say, but certainly no evidence of fraud.

9 And then come people on the front line, like Desirae
10 Flores, Desirae Flores. And remember Desirae, she had the
11 team. Could we see DX5001 for a second? Could you pull that
12 up possibly, Alex?

13 She was the woman who came and probably told you that
14 four people -- could you circle the same people she circled?
15 Jeffrey Brown, Michael Money, Susan Lucero, Bernabe Garcia.
16 Those were the former underwriters on her team. To hear the
17 government's opening or even the closing today you wouldn't
18 think there were underwriters out there in the world. These
19 are the ones that worked with her, and she was an underwriter.

20 Andrew Portek came and he told us about the training,
21 how he took the training with his people. Ron Gillet came and
22 talked about the Hustle pilot team that he supervised. And you
23 heard the testimony about Rebecca. You will hear more from her
24 counsel. What were they all doing? Working to process loans,
25 they were attending meetings, they were conferring about the

DAMTBAN4

Summation - Mr. Sullivan

1 process, e-mailing, participating in conference calls. Sounded
2 like a pretty healthy business atmosphere, collegial. And when
3 I mentioned that this morning, since when did collegial -- how
4 do you attack collegial? That was attacked by the government
5 this morning. Collegial I thought was good, people listening
6 to each other, giving opinions, making decisions, not all of
7 them right, and working in their business.

8 Bottom line is that the government's case hits a brick
9 wall. I call the brick wall reality. And just don't see the
10 world the way it actually was.

11 You know, to make allegations of fraud or scheme to
12 defraud or misrepresentation violations of law, it seems to me
13 carries with it a responsibility to produce the evidence to
14 prove it. And the record is devoid of cases, is an empty
15 container after four weeks. I don't think a fraud case should
16 be an Easter egg hunt.

17 MR. CORDARO: Objection, your Honor.

18 THE COURT: Ground?

19 MR. CORDARO: It's the "I don't think," your Honor.

20 THE COURT: Pardon?

21 MR. CORDARO: It's "I don't think," we're getting
22 into --

23 THE COURT: This is not -- this is a rhetorical
24 device. I don't believe that Mr. Sullivan was holding himself
25 as an expert on Easter egg hunts.

DAMTBAN4

Summation - Mr. Sullivan

1 MR. SULLIVAN: That's true, I was trying to make a
2 point that fraud case needs evidence, it's not an Easter egg
3 hunt, it's not going fishing, it's not panning for gold in
4 Utah. You need a lot of proof to charge fraud. You will hear
5 the standard of proof from the Court.

6 One of the things that, by the way, is significant
7 that I will ask you to -- you will be instructed on the Court
8 about this, too, is the unanimity requirement of the jury. Our
9 juries have to decide things unanimously. When you think about
10 it, there's nowhere else in America, business, the Supreme
11 Court decides things five to four, everything we have grown up
12 with family dinners you decide three want to go for ice cream,
13 two want to go somewhere else. Why do we require everybody to
14 agree on a jury? It's kind of a control point, isn't it? It's
15 because no one wants the wrong decision to be made. We want
16 jurors to consult. We want them to agree. If they can't
17 agree, of course the government can't win.

18 Here what we have is a case in which when you look at
19 what happened you see the day-to-day work, the insight of men
20 and woman in the mortgage industry. It's not exactly the most
21 exciting thing to see, it's not going to make a TV reality
22 show, sure of that. But the bottom line is that the
23 government's fraud theory in this case is really implausible
24 from the start. Fraud needs real perpetrators. Rebecca
25 Mairone running a fraud? I don't know who else the government

DAMTBAN4

Summation - Mr. Sullivan

1 thinks might be involved in the fraud.

2 Fraud needs a victim, too. The victims here --
3 intended victims are Fannie and Freddie. But when they come
4 here they don't sound like victims. Instead, the GSE witnesses
5 provide testimony inconsistent with the government theory of
6 fraud favorable to the defendants. Did Rebecca on her own
7 mastermind some fraud with all these other executives above
8 her, below her, beside her? Is that realistic? Is the
9 government really saying that Cliff Kitashima and Greg Lumsden
10 were supposed fraudsters? I don't know.

11 Among the best indicators of no fraud is Mr. O'Donnell
12 himself. He certainly wants a million six. Why not come to
13 court and testify a little more robustly for a million six?
14 Why not really sound like he lived through a fraud? There's a
15 reason, you know, he can't provide that kind of pop testimony.
16 The reason is twofold. One, there is no fraud, and two, he's
17 fenced in. He's fenced in by his documents, by the way he
18 lived it, by what other people say in the same circumstance.
19 He's fenced in to basically the truth when he wrote that memo
20 and said no fraud, no ethical problems.

21 That's why you get testimony that is blah, and you sit
22 there and wonder what the heck did they say and how does that
23 fit into allegations of fraud? Reminds me of a great saying by
24 a former President, in a different context, of course, when he
25 said you can't think and run, but they can't hide. He can try

DAMTBAN4

Summation - Mr. Sullivan

1 to run from the past, he can try to sound a little bit helpful
2 to the government, but he really can't because there are too
3 many documents and too many things that show the way that men
4 and women lived it out in those days.

5 You know, it was absolutely fascinating, I never heard
6 it before, but when you folks were worried about you're all
7 assembled in the room and worried about becoming jurors and
8 hoping it wouldn't be the case that I really focused on the
9 words that judge said about the juror's responsibility and how
10 the power to be a juror comes from our Constitution, and talked
11 about the glories of the United States. And one of them he
12 said is that we entrust this awesome power, this power of
13 justice, to you.

14 It's not often we citizens have any real power. You
15 have the power. You have the power to do justice. You have
16 the power to prevent injustice. Injustice is an awful thing.
17 It burns in the soul of its victims. It never goes away. It
18 can only be prevented. It can never be cured. Some diseases
19 can be cured. You can't cure injustice. It cannot be undone.
20 So as citizens on a jury, you have your duties. You will hear
21 them from the Court and you will hear the law. I leave you
22 with the same two words I started with four weeks ago: No
23 fraud. No fraud.

24 Return a verdict of not liable for the bank defendants
25 and for our employee, Rebecca Mairone. Thank you very much.

DAMTBAN4

1 THE COURT: Thank you very much.

2 All right, ladies and gentlemen, we will take a
3 ten-minute break at this time.

4 (Jury not present)

5 THE COURT: Anything counsel need to raise with the
6 Court?

7 All right. We'll see you in ten minutes.

8 (Recess taken)

9 (Continued on next page)

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DAM3BAN5

Summation - Mr. Hefter

1 (In open court; jury not present)

2 MR. HEFTER: Your Honor, I will take a five-minute
3 warning also, if that's okay.

4 THE COURT: Sure. Do you want a whistle, a siren?

5 MR. MUKASEY: Just throw something at his head.

6 (Jury present)

7 MR. HEFTER: May I proceed, your Honor?

8 THE COURT: Yes.

9 MR. HEFTER: Counsel, Rebecca, ladies and gentlemen,
10 good afternoon.

11 Rebecca, prime loans need low touch, low cost
12 processors and prime borrowers need faster turn time to keep
13 them from going elsewhere.

14 Rebecca, I am okay with the suspension for 90 days of
15 certain elements of QoG.

16 Rebecca, there are very few loans in my estimation
17 that we would not have or should not have made.

18 Rebecca, I believe we have the process steps and job
19 aids in place going forward, that when properly executed, will
20 get manufacturing quality to the right level.

21 Rebecca, I am okay with Fast Track being included in
22 the HSSL since that is exactly the type of product it is
23 designed for.

24 Rebecca, the QA reviews to date have been heavily
25 focused on process steps. I believe it is tough to draw

DAM3BAN5

Summation - Mr. Hefter

1 conclusions directly from those or even the QC findings alone.

2 Who told Rebecca Mairone that? Those are all direct
3 quotes from documents that you have seen out of the mouths and
4 lips of people within FSL. Who are those people? Those people
5 are the management of the credit risk and quality at FSL.

6 How can the government say that Ms. Mairone, Rebecca,
7 committed fraud, when the top people in the company in charge
8 of controlling risk approved the High-Speed Swim Lane, and
9 Central Fulfillment?

10 How can they say that Rebecca intended to harm Fannie
11 Mae or Freddie Mac when she spent months trying to put together
12 a quality assurance program?

13 How can they say she concealed any information
14 regarding quality assurance when she was the person who put
15 together the SWAT team to look into the quality assurance
16 results?

17 Quality had become a joke? Quality had become a joke?
18 That's what I heard out of the mouths of the government this
19 morning. And it's flatly false.

20 How can they say that she intended to commit fraud
21 when she implemented, approved, and supported each and every
22 measure to improve quality in late 2007 and early 2008 on her
23 watch?

24 The government is fond of saying that Rebecca Mairone
25 was the head of Central Fulfillment. She was. We do not

DAM3BAN5

Summation - Mr. Hefter

1 dispute that. But if she's going to get blamed for what
2 happened in Central Fulfillment, she better get credit for what
3 happened on her watch. All of the quality improvements that
4 the government has talked about, that the bank's counsel have
5 talked about, took place on her watch.

6 So the answer to all those questions, how can she be
7 held liable, is she can't be.

8 There is absolutely no evidence, ladies and gentlemen,
9 that she participated in a scheme to defraud knowingly with a
10 specific intent to defraud at any point.

11 Judge Rakoff will instruct you as to what those terms
12 mean. He will tell you, and he's going to tell you whatever
13 comes out of his mouth is the law. I hope I'm getting it
14 right. He will tell you that the claim against Ms. Mairone
15 must be decided solely on the evidence that relates to her.
16 And sometimes in this trial, ladies and gentlemen, I thought my
17 only role was to stand up and say "limiting instruction,
18 please."

19 And it will be very difficult for you to parse all
20 that out. And I'm not going to stand up here today and try to
21 parse it out for you, because there was no fraud.

22 He will also tell you that to act knowingly means to
23 act consciously and deliberately, rather than mistakenly or
24 inadvertently. But in this context it also means that
25 Ms. Mairone had knowledge that she was participating in a

DAM3BAN5

Summation - Mr. Hefter

1 fraudulent scheme. To act with a specific intent to defraud
2 requires that Rebecca purposely intended to deceive and harm
3 either Fannie Mae or Freddie Mac, or both, by seeking to sell
4 them mortgage loans or by seeking to affect the pricing of
5 those loans through false or misleading representations.

6 And where is the evidence, ladies and gentlemen, that
7 she personally wanted to deceive and harm Fannie Mae and
8 Freddie Mac? There is none. Where is the evidence that she
9 wanted to sell bad loans to Fannie Mae and Freddie Mac? There
10 is none. Where is the evidence that she knew in her mind that
11 the HSSL or Central Fulfillment would lead to the sale of poor
12 quality loans to the GSEs? There is none. Not even the
13 government's star witnesses, Ed O'Donnell and Michael Thomas,
14 testified that she wanted to sell bad loans to Fannie Mae or
15 Freddie Mac. There is not a single witness who testified that
16 Rebecca instructed them to ignore quality. Have you seen a
17 single document where Rebecca says that quality does not
18 matter? It doesn't exist.

19 Ladies and gentlemen, take a look at her 2007
20 strategic plan for FSL.

21 Am I doing this or are you doing this? I am. Okay.
22 Next.

23 This is a PowerPoint presentation. DX 240. Rebecca
24 Mairone is the presenter. 2007 FSL strategic priorities of the
25 priority objectives. So the first page for her priority

DAM3BAN5

Summation - Mr. Hefter

1 objectives -- as you might noticed, it is hard for me to read.
2 So what she says is develop and promote a divisional culture in
3 which, quote, doing the right thing is second nature.
4 Routinely bringing us the highest compliance and quality rating
5 possible.

6 Those are the words of Rebecca Mairone in a PowerPoint
7 presentation where she sets out her strategic priorities for
8 the company.

9 After reading that, you cannot conclude that
10 Ms. Mairone did not care about quality. It is exactly opposite
11 of somebody who would want to intend to harm another person.

12 The government continues to talk about speed. And I
13 believe that the government's counsel this morning said she
14 wanted to pursue profit instead of quality. Where is the
15 evidence of that? What witness testified to that? Not even
16 the government's witness testified to that. Where is there a
17 document that says that?

18 In any event, her intent was to streamline the process
19 for prime borrowers so that their files would not get stuck
20 behind more complex files. She believed that the High-Speed
21 Swim Lane was designed to reduce turn time by minimizing hand
22 offs and reducing unnecessary steps in the process from the
23 subprime model.

24 There is nothing fraudulent about wanting to make a
25 more efficient process. Increasing efficiency in the process

DAM3BAN5

Summation - Mr. Hefter

1 by reducing turn time does not mean that she personally wanted
2 and desired the process to generate defective loans. And there
3 is no evidence that she did. It is not fraudulent to send
4 around a production goal. Businesses do that all the time. In
5 fact, it is pretty standard.

6 Everybody knows that a Girl Scout wants to sell more
7 cookies in one year than the year before. It is pretty
8 standard that businesses try to figure out how much they're
9 going to sell in the next month, quarter or week or a day.
10 There is nothing fraudulent about that. There is no evidence
11 that she intended to harm anyone.

12 So why is Ms. Mairone sitting here in this courtroom
13 in the first place? I think you know the answer. Years ago,
14 Mr. O'Donnell, the government's chief witness, had it out for
15 Ms. Mairone, and now he's playing it out here. The evidence
16 before you, however, shows that his testimony in this case does
17 not fit with his own words and conduct six years before. So
18 Mr. O'Donnell came into this courtroom as a man with a grudge
19 and a mission.

20 Consider the following: You already heard about the
21 \$1.6 million. I won't dwell on that. He works at Fannie Mae,
22 you know that. But also, right from the words of his mouth, he
23 says:

24 "Q. And you faulted her for minimizing the roles of those
25 individuals?

DAM3BAN5

Summation - Mr. Hefter

1 "A. For my role specifically, yes."

2 Clear as day. He also put his name in to run Central
3 Fulfillment. He wanted that job. He didn't get that job. He
4 believes he didn't get the job because of Ms. Mairone. He
5 blames Ms. Mairone for that.

6 So this is Mr. O'Donnell in April of 2008. Where
7 Mr. Thomas in his e-mail says "It gave me comfort just to know
8 I got under her skin just a little bit." Then Mr. O'Donnell
9 says, I know the feeling. She's got rubber bullets in her gun
10 and we are going nuclear."

11 "We are going nuclear." That's pretty clear as to
12 what that means.

13 Then let's look at this e-mail from Mr. Comeaux to her
14 in June. Where he says to Ms. Mairone, to Rebecca, you do not
15 have a true understanding how he feels about you or what he has
16 said about you.

17 Mr. O'Donnell has a grudge and he came into this court
18 with a mission. His entire testimony is tainted by that bias,
19 ladies and gentlemen.

20 Now the government says in attacking Ms. Mairone's
21 credibility, look at what she testified at her deposition
22 compared to look what she testified in court. They point to a
23 few instances where she couldn't recollect something at her
24 deposition, but now she recollects it on the stand.

25 The reason for that, ladies and gentlemen, is that she

DAM3BAN5

Summation - Mr. Hefter

1 has sat here, day in, day out, every single day of this trial,
2 she spent numerous hours with us preparing for this trial in
3 the period between the deposition and now. Now you know why
4 she's able to testify about certain things that she may not
5 have had a recollection at her deposition.

6 Did Rebecca Mairone ignore concerns that were raised
7 about the High-Speed Swim Lane? No. This is a really key
8 point, because this morning, government counsel threw out all
9 these names about how they were raising concerns. This is an
10 area where I do want to focus on what they said and what the
11 evidence was.

12 There is only a single person in the entire record who
13 had direct contact with Ms. Mairone about the High-Speed Swim
14 Lane. Mr. Price could have raised concerns, other people could
15 have raised concerns, Mr. Aliano, Mr. Brent, Mr. Thomas. The
16 only person who had direct contact with Ms. Mairone in the
17 record, the evidence, is Mr. O'Donnell.

18 Mr. O'Donnell's testimony is that he expressed his
19 concern at steering committee meetings. He doesn't identify
20 the date of those meetings, he doesn't identify who was there,
21 we're left to assume that Rebecca was at every single one of
22 those meetings. So let's just say she was. Let's say she was
23 at all of those meetings. It still doesn't prove what the
24 government wants you to think. The government wants you to
25 believe she ignored concerns raised by Mr. O'Donnell.

DAM3BAN5

Summation - Mr. Hefter

1 Let's look at what he said at the time in his own
2 words as to whether it's believable that he actually expressed
3 concerns to her.

4 August 13, the day that the High-Speed Swim Lane
5 Hustle began. Mr. O'Donnell to Mr. Cannon and others,
6 Mr. Kitashima, Thomas, Price. Couple of notes below. Any new
7 process should not require underwriting involvement. We should
8 be thinking of leveraging underwriting only on critical risk
9 related items.

10 Is it believable that he was raising those concerns in
11 a steering committee meeting in or around that time if he
12 didn't think that underwriters should have that involvement?

13 August 13, same day. We discussed this topic with
14 Cliff -- that's Mr. Kitashima -- on Thursday night. We're
15 going to move forward with allowing the loan specialists to
16 determine reasonability.

17 That's income reasonability on the stated income loan.
18 We know that.

19 Is it actually believable, is his testimony in this
20 court believable? Let's see what he said.

21 Number one, I was concerned that loan specialists
22 wouldn't be up to the task. How does that square with his
23 statements in the documents at the time? It doesn't, ladies
24 and gentlemen.

25 The government showed him also PX 52. Or showed us PX

DAM3BAN5

Summation - Mr. Hefter

1 52. This is the e-mail on 8/3 where Rebecca says to Ed so it
2 sounds like it may work. Is that what I am hearing? Question
3 mark.

4 You recall, ladies and gentlemen, that Mr. O'Donnell
5 had assembled a bunch of questions from people out in the field
6 in the national sales center. He was summarizing those
7 comments and he was forwarding them to Rebecca. And his
8 testimony about this, when he was asked the question, so it
9 sounds like it may work, was "I was confused by that answer."
10 That was his testimony. "I was confused by the answer." Is
11 that fraud when she asked the question It sounds like it may
12 work. Is that what I am hearing? Is that fraud? And also
13 there is a question mark there. What was he confused about?
14 He had already responded to all these people that he did not
15 believe that quality was an issue with the High-Speed Swim
16 Lane. This is on August 3.

17 On August 1st, he responds to an e-mail to James White
18 and he says: Very important to make it clear that we are
19 talking about prime loans. We don't have quality issues on
20 prime due to the strength of the borrower. They are the
21 quality part of the deal. The focus is on moving the deals
22 quickly and eliminating hand offs, returns or unnecessary
23 requirements that delay signings.

24 So is it believable that he was confused about
25 Ms. Mairone's response on August 3 when two days before he was

DAM3BAN5

Summation - Mr. Hefter

1 he's telling James White, a member of his organization, don't
2 worry about it? We've got this covered? The prime borrower is
3 the quality part of the deal. It's not believable.

4 Also, if he was confused about Ms. Mairone's question,
5 if he thought she wasn't understanding, which I think was his
6 testimony in this courthouse, did he call her? Or send an
7 e-mail? Asking her what she meant? No. There is no evidence
8 of that. None. Why? There was no reason to. He had already
9 told his people that they should not have any concerns.

10 You heard government counsel make a big deal of PX 52
11 and Ms. Mairone's question. That's what the government says is
12 fraud or part of their fraud case. They completely ignore the
13 next page of the document. Well, I don't think we have it up
14 there. But I'll tell you what it says. In the same document,
15 after she says I think it may work. She also asks Cliff, she
16 sends Cliff a question. Cliff, what do you think?

17 So this is part of the collaborative process.
18 Ms. Mairone, Rebecca, talking to Cliff and Ed about any issue
19 relating to the rollout of the High-Speed Swim Lane.

20 You also heard talk about Michael Thomas' concern
21 about the High-Speed Swim Lane. He's an interesting witness
22 because, as you've heard, he works at Fannie Mae, he got his
23 job through Ed O'Donnell. There is absolutely no evidence that
24 he raised any concerns about the High-Speed Swim Lane to
25 Rebecca at any time. Nothing.

DAM3BAN5

Summation - Mr. Hefter

1 The government believes that Mr. Thomas' August 8
2 e-mail is a smoking gun. They want you to believe that
3 Mr. Thomas' concerns were ignored by Rebecca. That's
4 interesting, because there is absolutely no evidence that she
5 received an e-mail. There is no evidence that he sent it to
6 Greg Lumsden, Cliff Kitashima, Rebecca, or Ed O'Donnell. Ed
7 received it from somebody else.

8 Also, remember Mr. Thomas' testimony. When you look
9 at his testimony, he doesn't know who was making decisions, who
10 were in any of the meetings, and he wasn't there.

11 So five days after Mr. Thomas' e-mail lands in
12 Mr. O'Donnell's e-mail box, Mr. O'Donnell is sending this
13 e-mail to Rebecca and others. "I'd recommend that we continue
14 to exclude purchases, loans greater than 1 million, and
15 non-arm's length. I agree with the remainder of the list."
16 He's telling everybody let's move forward as long as we have
17 certain loans excluded. Mr. O'Donnell's suggestion was
18 followed. Those type of loans were excluded from the
19 High-Speed Swim Lane pilot.

20 So, for the government to say Mr. Thomas' August 8th
21 e-mail is relevant, it's not, because Mr. O'Donnell is telling
22 Rebecca multiple days later let's go forward. And we know
23 there is no evidence that Mr. O'Donnell didn't want to go
24 forward. The government claims that he gave conditional
25 approval. Show me a document where he says that. There is

DAM3BAN5

Summation - Mr. Hefter

1 none back then.

2 Also, the government showed you this morning an e-mail
3 from Mr. Barnett. I think this is very important because it
4 goes to what loans were going into the High-Speed Swim Lane.
5 Okay. This is what they showed you this morning. This is
6 Mr. Barnett to a group of people. I apologize I don't have it
7 on the screen. He says as of September 12, the HSSL teams will
8 get all loans regardless of criteria.

9 That's what was showed to you this morning. Okay.
10 Mr. Aliano, one of the risk guys, responds. "All loans
11 regardless of criteria are going to the High-Speed Swim Lane"
12 question mark, question mark, question mark, question mark.
13 That's a risk issue. Mr. Aliano is doing his job. Then, the
14 part that the government doesn't show you, after Mr. Aliano
15 raises that question, "Patrick," this is Mr. Barnett. "I
16 probably should not have been so brief. It would be inaccurate
17 to say all loans will follow the same process as the current
18 PCAs and CLTV less than 80 percent." That's what he says.

19 He made a mistake. That's not fraud. For the
20 government not to show you that and only the previous ones is a
21 gimmick. Like most of their arguments is a gimmick. Like the
22 argument that they wanted two days to go from PC0 to PC2.
23 That's a gimmick. That's not the time you get an application
24 to funding. It has to go through PC0, PC1, PC2, PC3, PC4, and
25 then funding.

DAM3BAN5

Summation - Mr. Hefter

1 Mr. Gillet's e-mail where they're talking about going
2 from appraisal to CTC. That's not a measure of going from PC0
3 to PC4. That doesn't measure turn time. Turn time is app to
4 funding. Appraisal to CTC is within that work flow.

5 So for somebody to be saying we got to shorten that
6 time doesn't mean they were looking to shorten everything else.
7 It's misleading. So, let's keep this -- I'm sorry. Let's keep
8 this e-mail up here for a second.

9 Mr. O'Donnell is making a recommendation to the entire
10 group as the head of underwriting. He is a subject matter
11 expert. A senior one. There were others, Brent, Aliano,
12 Jaraba. These were the people within the company whose job it
13 was to check and monitor quality. Of course, it was Rebecca's
14 job to focus on quality as well. But there was a separate
15 organization that was specifically there to focus on quality.
16 None of those individuals objected to the rollout of the
17 High-Speed Swim Lane pilot or Central Fulfillment.

18 As for Ms. Mairone, she checked with them every step
19 of the way. And why would you consult with the risk guys if
20 you wanted to commit a fraud? Doesn't make sense. Why would
21 she have all these conversations, all these e-mails? Doesn't
22 make sense. Doesn't add up. Why is she saying in this e-mail,
23 you know the e-mail where Cliff and Ed's comments are in blue.
24 You know that e-mail. That's an e-mail when Rebecca is seeking
25 Ed and Cliff's input on all of the issues regarding the design

DAM3BAN5

Summation - Mr. Hefter

1 of the High-Speed Swim Lane. What do they say? In blue. "I
2 am okay with the suspension for 90 days for certain elements of
3 the QoG. We should keep those tied to key areas such as
4 responsible lending, fraud, affordability and collateral."
5 Well, that's what happened. No one took out the fraud program.
6 That was still there.

7 Flash forward a month. This is Mr. Aliano on
8 August 31. Rebecca's on it. Aliano's one of the risk guys.
9 It is another instance of collaboration, of talking about the
10 various risks that could come up. He says "I'm okay with Fast
11 Track being included into HSSL since that's exactly the type of
12 product it's designed for." Then it says "Fast and Easy
13 appraisal waivers equals fast close."

14 We've heard a little bit about Fast and Easy.
15 Mr. Aliano, the risk guy, is saying he's okay with Fast Track
16 going into the High-Speed Swim Lane.

17 That type of discussion and debate as to what should
18 be in, what should be out, what's the appropriate turn time, is
19 it 15 days or 24 days, is the normal nature of business and
20 discussion. It is inconsistent with anybody committing or
21 trying to commit a fraud.

22 The government argued this morning that there were bad
23 QA results from the pilot. They argue that, or they want you
24 to think that Rebecca and others should have stopped the pilot
25 at that point in time. The government wants you to believe

DAM3BAN5

Summation - Mr. Hefter

1 that Ms. Mairone was advised that the rollout into Central
2 Fulfillment was ill-advised. That's just false. Let's look at
3 that.

4 All right. So this is on September 21. September 21.
5 This is a week and a half before the rollout of Central
6 Fulfillment on October 1st. This is from Loren Rodriguez to a
7 group of people, a large group of people, including Rebecca,
8 Cliff, Ed, Cheri Shine. "As you know, we have a session with
9 Greg on Tuesday to review Central Fulfillment. There is also a
10 prep session with Rebecca, Cliff, Cheri, and Ed midday Monday
11 to review where we are."

12 All of them discussed it. Why would you be having all
13 these meetings out in the open with 15, 20 people if you were
14 trying to commit a fraud? No one was behind closed doors and
15 back rooms trying to sell bad loans here. This was all out in
16 the open. Out in the sunshine. Or if you were Rebecca,
17 working at 1 o'clock in the morning, the middle of the night,
18 worried about quality.

19 And nobody, there is not a single piece of evidence in
20 this case, testimony or e-mail, in which she was advised that
21 the rollout would lead to the sale of riskier loans to the
22 GSEs. That she was advised. What was going through her mind.
23 That is the only thing that matters with respect to Rebecca.
24 No one knows what's going through her mind. We don't have a
25 magic machine that can do that. We're not psychics. But we

DAM3BAN5

Summation - Mr. Hefter

1 can look at all this evidence and say there is no way that she
2 had an intent to defraud and harm Fannie Mae and Freddie Mac
3 based on all this evidence.

4 Let's look at Mr. O'Donnell. November 13, 2007,
5 Central Fulfillment is six weeks old at this point in time.
6 And he does a presentation with Rebecca and Wade Comeaux about
7 the new fulfillment model. If you objected so much, if you
8 found it was so offensive that you gave your conditional
9 approval to the pilot, why put your name on a presentation?
10 You don't like it? You don't put your name on it. But he did.
11 It shows you at the time he was in favor of it.

12 Right then and there, in Mr. O'Donnell's and
13 Ms. Mairone's presentation, key target goals in today's
14 challenging environment. Yes. Increased philosophy target 24
15 days turn time. App to fund. 24 days. They intended to rush
16 the process? Improve efficiency.

17 This is a good one. You probably can't read it. I
18 can't read it either, but it's something like 55 to 65 percent
19 fund re. What does that mean? That's the app to fund re.
20 That means they didn't intend to fund 100 percent of the
21 applications they got. They just wanted to get to 50 to
22 60 percent.

23 If you were trying to sell bad loans to GSEs, if you
24 were trying to commit a fraud, why not sell 100 percent of the
25 applications? Don't do anything. There is no fraud.

DAM3BAN5

Summation - Mr. Hefter

1 Maintain quality. It is a balance, ladies and
2 gentlemen. That's what the mortgage business is. It is a
3 balance, and they were all focused on it, and Rebecca was
4 focused on it, importantly.

5 What about the QA results from the pilot. Okay, those
6 weren't that good. We heard about this sort of debate. About
7 whether QA means QC, QC means SUS. QA means SUS. It is all
8 confusing.

9 But all the witnesses, including Mr. O'Donnell at the
10 time, believed the QA process, the prefunding QA process
11 measured process steps. So let's look at this. This is the
12 PC3 review.

13 In virtually all of these findings, meant that there
14 was not a piece of paper in the virtual loan file. It didn't
15 mean it didn't exist. It is a double negative, I think. It
16 didn't mean -- it didn't mean that they did not have an
17 appraisal. Someone put it in the wrong file. That's what
18 those find. Ms. Mairone testified she was concerned about one
19 of the aspects of it. 14 findings related to appraisal review
20 does not support value. She testified about that. That is
21 what she was concerned about. 1.76.

22 We know that Michael Burns, who reports to Michael
23 Thomas, said in March that the leading cause of the findings
24 was document not in VLF. Document in wrong location. Document
25 in correct location, but the auditor made an error. Document

DAM3BAN5

Summation - Mr. Hefter

1 not in VLF. We don't need to debate this here. But what we do
2 need to think about is that in her mind, as she was thinking
3 about rolling out the High-Speed Swim Lane, when she was
4 thinking about Central Fulfillment, in her mind, she believed
5 these results measured process. And she was proven right when
6 Michael Burns said, months later, that they did measure process
7 and these things did not relate to items that could lead to a
8 SUS.

9 What does Mr. O'Donnell say? I've already said that
10 so I am going to gloss over this. But he does say at the time
11 in March of 2008 the QA reviews have been heavily focused on
12 process steps. That's Mr. O'Donnell saying it. Everybody
13 agreed with him.

14 So now he stands in court and states under oath that
15 the QA results measured investment quality. No one at the time
16 believed that to be the case. And in fact, no one,
17 Mr. O'Donnell, not Mr. Thomas, not Mr. Boland, not Mr. Price,
18 stood up and said we should stop the rollout of the High-Speed
19 Swim Lane into Central Fulfillment. No one. That was after
20 the initial High-Speed Swim Lane results came out.

21 Now, the government seizes on a single e-mail. A
22 single e-mail that Ms. Mairone sent out in November 29. It is
23 the crux of their case. Ah-ha. It is a theory in search of
24 evidence and we've combed the file and we found the hot
25 document. The November 29 e-mail.

DAM3BAN5

Summation - Mr. Hefter

1 I want to talk about that. Because the notion that
2 Ms. Mairone hid anything, concealed anything, attempted to
3 commit a fraud, was part of the fraud as a result of the
4 November 29 e-mail is false. We've proved it to be false. She
5 did not intend that e-mail to be part of a fraud, to conceal
6 anything, to make sure that QA reports weren't being studied,
7 to lock the QA reports in her drawer so they would never be
8 seen by anybody. It's just false. We know that. All right.

9 So, I have a timeline here. I'm not going to go
10 through every single piece of the timeline, but it shows
11 specifically the reasons for the November 29 e-mail. That she
12 met with Greg Lumsden and Cliff Kitashima, and they determined
13 that she would be tasked with sending out the e-mail because
14 the QA reports had become a distraction at the line level and
15 they were confusing. And Scott Bridges, the head of sales,
16 says that people are getting bombarded. We need to fix it.
17 That's 11/16.

18 11/28 meeting with Lumsden, Kitashima and Mairone.
19 Mairone's e-mail.

20 On December 4, however, weekly QA/QC meetings are
21 established. Reports to be published in advance.

22 We know, ladies and gentlemen, that the reports were
23 sent out, they were sent to Mr. Kitashima, they were sent
24 outside of Central Fulfillment. They were sent to everybody
25 who were in the credit quality and risk. They were studying it

DAM3BAN5

Summation - Mr. Hefter

1 at the time. And Rebecca was taking a leading role. She said
2 I want a SWAT team. I want to figure out what the SUSs are.
3 We must do everything on income reasonability. I am going to
4 show you that here. That is not consistent with somebody who
5 was trying to commit a fraud. Somebody who was trying to or
6 intending to harm or deceive anybody. That's consistent with
7 legitimate behavior of a businessperson who tried to get to the
8 bottom of an issue.

9 What does Mr. O'Donnell say about it? Can we pull it
10 up? This is on December 4. He's sending this to Mr. Jaraba,
11 Brent, and the risk guys. He's saying QA risk management and
12 compliance related issues findings will be communicated only at
13 the MD level for Central Fulfillment to avoid any distractions
14 to line employees or line management.

15 Everybody believed the employees were distracted at
16 the time. They were trying to figure out how best to
17 communicate with them. So let's keep on going.

18 At her direction, at Rebecca's direction on the 7th,
19 QA daily reports are sent out and consolidated in manageable
20 format. Consolidated QA reports are sent to her, and other
21 members of risk/compliance. These reports weren't put in a
22 drawer. These reports weren't hidden from people. They were
23 studied.

24 Keep on going. Rebecca requests that she wants the
25 four key findings. She didn't care about quality? Why is she

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Summation - Mr. Hefter

1 asking Mr. Brent to go out and get the four key findings. And
2 ladies and gentlemen, you have all these documents. Or you
3 will have them.

4 She has a meeting on the 11th with Cliff and Ed,
5 Javier and Steve. What is the purpose of that meeting? You're
6 trying to commit a fraud by hiding the QA results, why do you
7 have a meeting with the key risk people? They're trying to do
8 the right thing.

9 This is a key one. Can I have that. On the 11th,
10 Rebecca asks for a report that details the five top six-ish SUS
11 findings that can be aligned with the findings from the QA
12 reviews. She's asking for that. What she's saying is okay, we
13 have all these QA results, which are the important ones that
14 might lead to a bad loan. Some are noise, some are not. I
15 want to find out. That's what she's saying.

16 She says put together a newsletter-ish document Myth
17 Busters that would address process and procedures perspective.
18 Rebecca and Cliff agreed to have a SWAT team put together with
19 representatives of tech, process engineering, FSL, risk
20 management, compliance, QAC, FSL, training, etc. to address the
21 top six issues relating to credit quality.

22 Who does that if you want to commit a fraud? Who does
23 that if you want to intend to deceive and harm somebody? You
24 don't. They were trying to get to the bottom of what all these
25 results meant in a very turbulent time. Very turbulent time.

DAM3BAN5

Summation - Mr. Hefter

1 The government points out to you this morning that in
2 connection with an e-mail that Steve Brent sent to Wade,
3 Rebecca says let's discuss offline. And they say when someone
4 says let's discuss offline in an e-mail, they draw the
5 conclusion, the government draws the conclusion that it was
6 intended to jeopardize quality? How many people say let's
7 discuss this offline. I don't know how they can draw that
8 inference. It is impossible to draw that inference from that,
9 let's discuss offline.

10 Then, she sends a recap of the meeting to Comeaux,
11 Price, White, and Massie. For our QA meeting tomorrow.
12 Another meeting to discuss QA. Out in the open. Rebecca tells
13 them to develop short and longer term solutions for key QA
14 findings. Why is she doing that? Because she cares about
15 quality.

16 On the 17th, weekly corporate QC findings are sent to
17 over 40 people. Was there ever an intent to hide those
18 reports?

19 The documents speak for themselves, ladies and
20 gentlemen. The government's assertions here do not fit the
21 evidence.

22 Then, she tells all of her people we must document
23 (answer the six questions) for all stated loans. She's
24 directing her team we must document for all stated loans. At
25 this point Price, Sallis, and White are reporting up through

DAM3BAN5

Summation - Mr. Hefter

1 her. She's telling them in Central Fulfillment, they must tell
2 their teams to document all stated loans. That was going
3 through her mind. Not anybody else's mind. Not Jim White or
4 Ron Gillet down in Richardson, Texas or anybody in Chandler.
5 Talking about poker tournaments or anything like that.

6 Which all related to, by the way, the poker
7 tournaments all related to the sprint incentive, and there is
8 no evidence in the record that Rebecca had anything to do with
9 the sprint incentive. They don't tell you that.

10 Then she says on the same day, in another e-mail, "Our
11 job is to document correctly. That is what the investors are
12 looking for."

13 If you don't care about the investors or Fannie Mae
14 and Freddie Mac for the most part, at this point in time why
15 would you say we need to document, that's what our investors
16 are looking for. Think about it. What's going through her
17 mind?

18 I forgot to mention, one of these documents, it's
19 around 1 o'clock in the morning. 1 o'clock in the morning
20 she's sending an e-mail, one of these e-mails out in the dead
21 of night. Caring about quality.

22 Quality had become a joke? That's what I heard the
23 government say?

24 This entire timeline of QA summit in Richardson,
25 Texas. The government criticizes her because she wasn't there.

DAM3BAN5

Summation - Mr. Hefter

1 Well, we know the truth. It was her daughter's birthday.

2 That's not fraud. This negates fraud and any inference of it.

3 Let's take a look at PX 120 if I can quickly get that.

4 The government showed you this document. I don't have it on
5 the screen. This is from Wade to Rebecca: FYI, LSs have been
6 receiving no QoG feedback for months. We also have no
7 organized detail on SUS findings per LS or OM.

8 They showed that to you. What they don't show you is
9 Wade saying: Rebecca, we are now, after months of pushing for
10 it, receiving QA data on LS level.

11 After months of pushing for it. We. After months of
12 pushing for it. They didn't show you that part of the
13 document.

14 Now, we also heard about controls in the system. That
15 was incredibly important to Rebecca. You have seen this
16 before. And with due apologies to Mr. Sullivan, we had some
17 interaction here, so I just had to use it. All these people
18 who now are part of the Central Fulfillment management team
19 came out of Ed O'Donnell's organization. Look at what they
20 are. They're majority -- I was about to say all, but that
21 would be wrong. Majority of them are underwriters prior to
22 Central Fulfillment, especially White, Sallis, and Price. The
23 senior guys.

24 So when they built the system, think about what's
25 going through her mind. When they built the system, they took

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Summation - Mr. Hefter

1 the underwriters who reported up through Mr. O'Donnell, and
2 they put them in charge of the whole organization. How is that
3 increasing risk? That was responsible.

4 And you notice something, which is an important point.
5 None of these people reported to Lloyd Sergeant. He was the
6 sales guy. He was the real sales guy and he continued to
7 manage the sales organization. Production is not sales. It's
8 different.

9 Now, I had to bring this out. I urge you when you are
10 in the jury room to study this chart and the rhombuses and the
11 triangles and the like. Because if you look at the specific
12 steps that every single loan had to go through and how they
13 built this, you cannot draw any inference that anybody wanted
14 to deceive or harm anybody. By building it this way, negates
15 an inference of Rebecca's intent.

16 You also saw this. August 27, deployment risk and
17 mitigation steps. Why would you need mitigation steps if you
18 were attempting to commit a fraud and you didn't care about
19 quality? That's what they were thinking about.

20 We've seen the training matrix. You've seen the CF
21 authority matrix. All of these things were built to control
22 for the inherent risk of running a mortgage business. The
23 inherent risk of running a mortgage business. And as the head
24 of Central Fulfillment, she was involved in all of these steps
25 to control that risk. Who would perpetrate a fraud this way?

DAM3BAN5

Summation - Mr. Hefter

1 So what happened when the market dramatically changed
2 in 2007? How did FSL respond? They responded in many ways.
3 And there are many PowerPoint presentations that you will have
4 at your disposal that show it. Again, ask yourself, why would
5 you put all these things in PowerPoint presentations of all the
6 things you are doing to correct things that were challenging
7 your quality if you were trying to hide something. You
8 wouldn't.

9 And this time, Mr. Sullivan actually had a better
10 chart because he had it all organized. But as the head of
11 Central Fulfillment, Ms. Mairone was involved in everything
12 relating to the remedial measures that were put in place at CF.

13 Before I close, your Honor, and ladies and gentlemen,
14 I do want to hit just very quickly, two things. One is, the
15 concept that Rebecca's involvement with NCA had anything to do
16 with the High-Speed Swim Lane. The government points to one
17 document where somebody in one of the NCA processing centers
18 did something wrong. If you study the dates and you study
19 Rebecca's testimony, she had nothing to do with NCA at the
20 time. So for the government to pick out one document where one
21 person who ultimately was disciplined and then to draw this
22 broad conclusion that everybody involved with NCA over all of
23 time somehow is tainted with that is unfair.

24 I would also say, the second point is, this whole
25 notion about slide removal. The evidence is clear that

DAM3BAN5

Summation - Mr. Hefter

1 whatever Mr. O'Donnell is making up about Ms. Mairone
2 instructing him to remove slides is false. Because we showed
3 him the final -- here we go. This is the document the
4 government used with him. It's not. Is this the final? Thank
5 you.

6 This is the final version that was provided to Drew
7 Gissinger. Mr. Kitashima confirmed it. This was the final
8 version. It is not the one that Mr. O'Donnell believes was
9 provided to Mr. Gissinger on that date. And you can see on
10 page five, quality control update was provided. Page six,
11 quality control update. Page seven. FSLD quality assurance on
12 page 17.

13 There was never, ever, any instruction by Rebecca to
14 remove slides. It is made up.

15 Now I noticed that I don't have the five-minute
16 warning yet, but I'm going to start with my finale.

17 THE COURT: Well, you beat me to the punch.

18 MR. HEFTER: Thank you, your Honor.

19 Ladies and gentlemen, my time is up now. When you go
20 back to deliberate, did you hear any evidence that Rebecca
21 wanted to hurt or harm Fannie or Freddie? You can tell by her
22 testimony that she is a determined and she was a focused
23 executive. You saw that when she wanted compliance and loan
24 quality to be a foundation at FSL.

25 Now we are far away from Pasadena, California in this

DAM3BAN5

Summation - Mr. Hefter

1 courtroom. You've not seen a single document or heard from a
2 witness saying that Rebecca was trying to trick anyone or hide
3 anything. The intent to defraud, the bad intent, is just not
4 there. There is nothing, no piece of evidence from which you
5 can draw any conclusion that in her mind she thought that she
6 was acting to harm or deceive Fannie or Freddie.

7 The case is brought in the name of the United States
8 of America. And these lawyers work at the Justice Department.
9 And in the Justice Department, there are the words in the
10 rotunda "The United States wins its case whenever justice is
11 done one of its citizens in the courts."

12 Ladies and gentlemen, if you do justice and return a
13 defense verdict for Rebecca, the United States will win. It
14 will win because she will be free, one of its citizens will be
15 freed from these unjust and unfair charges. And ladies and
16 gentlemen, the laws of this country give you that power. Use
17 that power to free Rebecca of these charges. Hold the
18 government's feet to the fire. Ask them why their witnesses
19 had no specifics. Ask yourselves why did those witnesses say
20 one thing then and another thing now. Ask them why not a
21 single witness could testify that Rebecca acted improperly.

22 Remember her words and conduct now. She was there in
23 good faith for productivity, client satisfaction, and quality.
24 We are the last voice you'll hear for Rebecca before you
25 deliberate. We have no rebuttal. The government does. When

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Summation - Mr. Hefter

1 you hear their rebuttal, just ask yourself what would I say in
2 response to their rebuttal.

3 Rebecca, it's been has been honor to represent you.

4 Six years ago she tried as hard as she could in
5 perfectly good faith to fix whatever problems that her
6 colleagues and bosses threw at her. She didn't do anything to
7 defraud. Now she finds herself in this terrible spot. Only
8 you can free her from it.

9 I ask you, ladies and gentlemen, please do so in the
10 name of fairness and justice and return a verdict of not liable
11 for Ms. Mairone. I thank you.

12 THE COURT: Thank you very much. We will take another
13 10 minute break.

14 (Jury excused)

15 THE COURT: I noticed that with his usual sense of
16 perfect timing, the U.S. attorney entered the courtroom just as
17 we were taking a break.

18 Anyway, anything counsel needs to raise with the
19 Court? We'll see you in 10 minutes.

20 (Recess)

21 (Continued on next page)

DAMTBAN6

Rebuttal summation - Mr. Cordaro

1 (Jury present)

2 THE COURT: Ladies and gentlemen, the government,
3 because it has the burden of proof, is given a brief 20-minute
4 rebuttal.

5 Counsel.

6 MR. CORDARO: Good afternoon, ladies and gentlemen. I
7 know you have been sitting here a long time today and I want to
8 thank you for your attention today and throughout this trial.
9 You have put your lives on hold for quite some time and we are
10 all grateful.

11 Ladies and gentlemen of the jury, let's get back to
12 what this case is really all about. This case is about lies.
13 This case is about deception. This case is about the Hustle.
14 This case is about lies that Countrywide told Fannie Mae and
15 Freddie Mac about the quality of their loans. You saw the
16 misrepresentations. You saw the promises and the contracts.
17 Those lies are fraud. That's the kernel of the case here.

18 The evidence is overwhelming that the defendants put
19 into place a loan origination process that was designed to push
20 loans through at high speed. Their own documents use those
21 terms, straight through at high speed. The evidence is
22 overwhelming, they knew that the loans that were going through
23 that process were poor quality loans. And the evidence is
24 overwhelming that, despite that knowledge, they sold those
25 loans to Fannie Mae and Freddie Mac with lies that the loans

DAMTBAN6

Rebuttal summation - Mr. Cordaro

1 were investment quality. That is fraud.

2 Mr. Sullivan made an allusion to Alice in Wonderland,
3 suggesting that the government is not dealing in reality here.
4 Well, in the real world, fraud is illegal. Let me tell you
5 what is happening in the real world here. The High-Speed Swim
6 Lane, emphasis on speed and volume, removal of quality
7 checkpoint, removal of underwriters, faster turn times, turn
8 time bonuses, funding quota, funding bonuses, terrible QA
9 reports, terrible QC reports, suspension of quality and grade,
10 sprint incentive, poker run, horse racing, that's all reality.
11 That's not fantasy. It's in the evidence. And one more
12 reality, the lies that the defendants told Fannie Mae and
13 Freddie Mac about the quality of those loans. That is the
14 brick wall that Mr. Sullivan was referring to. But it's not
15 government's case that hits that brick wall, it's the
16 defendant's.

17 Ladies and gentlemen, counsel for the defense talked
18 about men and women working hard. The government does not
19 dispute that. We're not disputing that Desirae Flores and
20 people like her worked hard. But that's a distraction. It's a
21 distraction designed to deflect your attention from the
22 evidence. It's a distraction designed to deflect your
23 attention from the people who participated in this fraud,
24 people like Ms. Mairone and Mr. Lumsden and Mr. Kitashima who
25 knew about the fraud and acted with intent and pushed forward

DAMTBAN6

Rebuttal summation - Mr. Cordaro

1 anyway. People like Ms. Flores, they were pawns in the
2 process. They were part of a culture that pushed funding,
3 funding, funding.

4 We're not saying that Desirae Flores committed fraud,
5 but the bank did. We're not saying that Desirae Flores or
6 people like her or people who were eating Bloomin' Onions in
7 Outback knew about the misrepresentations that the defendants
8 were making to Fannie Mae and Freddie Mac. But Rebecca Mairone
9 did. That's the fraud.

10 You heard a lot of discussion about loan specialists
11 and their qualifications. And we heard a lot of talk about how
12 loan specialists were former underwriters. So I put a question
13 to you, if it's so great that some loan specialists were former
14 underwriters, why remove them from the process in the first
15 place? Why kick them out of the process for CLUES accept
16 loans? Underwriters are the guardians of quality. Apparently
17 their presence was not wanted in the High-Speed Swim Lane for
18 CLUES accept loans.

19 And if the loan specialists were so qualified, why did
20 Ms. Mairone have to suspend the Quality of Grade? Why did she
21 have to extend that reprieve for six months? If they were so
22 qualified, why did some of them have to grandfathered into
23 their level one authority, as Mr. Thomas discussed? If they
24 were so qualified, why did the high risk QA findings on Hustle
25 loans reach 98 percent? If they were so qualified, why

DAMTBAN6

Rebuttal summation - Mr. Cordaro

1 decrease the number of file reviews they had to go through to
2 get their level two authority? And finally, if the loans
3 specialists were so qualified, why, at the end of the process,
4 when the quality had gone down the drain and Drew Gissinger
5 exploded, did they bring back the underwriters? They want to
6 take credit for that. But they don't get a free pass for the
7 nine months that they had been selling loans to Fannie Mae and
8 Freddie Mac with lies about their quality. That is fraud.

9 We've head heard quite a bit about QA. Mr. Hefter in
10 his closing statement himself admitted: Wasn't that good.
11 They know it's not that good. In fact, it's worse than not
12 that good, it's terrible. So what do they do? They concoct
13 this story that quality assurance is not about quality. It has
14 nothing to do with quality, it's process.

15 And you saw what happened when Mr. Sullivan tried to
16 construct an analogy for you with the table and the projector,
17 he fell all over it because the analogy made no sense. He said
18 something about soldering a table. That sure sounds like it
19 goes to quality to me, because I want my table to be soldered
20 right. He started talking about cars at GM. If my car
21 manufacturer was pushing through cars and removing quality
22 checkpoints, that sounds a little more than process, I think
23 that would get to the quality. And if they were doing quality
24 assurance tests on those cars and they were finding 98 percent
25 severe findings, that sounds a little bit more like quality

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Rebuttal summation - Mr. Cordaro

1 than process to me.

2 Those chairs you're sitting in were constructed by
3 somebody. The process to manufacture those chairs has nothing
4 to do with quality? It's easy for a lawyer standing in the
5 well, tell that to the person sitting in the chair. Oh, and by
6 the way, what happens if you sell that chair to the person with
7 the representation that the chair is quality and yet you know
8 from your own internal documents that the chairs coming out of
9 that process are garbage? That's a fraud. That's a lie.

10 There's been much talk about the QC results. And what
11 has to be understood about them is that they're unreliable.
12 That document that you keep seeing, Defendant's Exhibit 73, the
13 one that they keep waving like a magic wand hoping that it will
14 make all the other evidence disappear, well, that's after the
15 poker run, after all the incentives, after the focus on the
16 rebuttal of SUSs. But it's interesting that the number for the
17 first quarter 2008 is still 9.8 percent. Sounds like they want
18 to take credit for that.

19 Do you remember what Michael Thomas said? Cliff
20 Kitashima told him the internal standard at Countrywide was
21 four percent. Four. This is the final QC number that the
22 defendants are trumping, 9.8 percent. It's more than twice as
23 much. And these are loans that are being sold to Fannie Mae
24 and Freddie Mac with lies.

25 Who knew about these lies? We heard both in the

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Rebuttal summation - Mr. Cordaro

1 opening statement and again today that this process wasn't
2 taking place behind closed doors, it was out in the open, out
3 in the sunshine. Really? Did one witness from Fannie Mae or
4 Freddie Mac tell you that this process was out in the sunshine
5 to them? Did anybody tell them about this process? And more
6 to that, the very first witness for the defense, the COO of
7 CFC, Jack Schakett, testified that he didn't know about it. So
8 how could you believe them when they tell you this process was
9 out in the sunshine?

10 You heard a lot today about what's a Hustle loan and
11 what isn't. We say there are over 28,000 Hustle loans. The
12 defendants disagree. They say it's less. They wave Michael
13 Thomas' fax at you as if it was some ah-hah document. It's
14 not. The government relied on the bank's own data for its
15 definition. And by the way, that data says that a loan
16 specialist cleared to close the Florida doorman loan, and we
17 have heard a lot in this trial about the role of loan
18 specialists in the High-Speed Swim Lane.

19 But be that as it may, the fraud here is the lie. The
20 fraud has to do with the quality of the loans. Even the
21 defense's own expert, Mr. Broeksmit, didn't look at the loans
22 for quality. He wasn't assigned to look at the loan files for
23 quality. He pulled a sprint incentive on them. And why?
24 Well, I guess that's a question for the defendants, but the
25 bottom line is: Why does anybody bury their head in the sand?

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Rebuttal summation - Mr. Cordaro

1 Maybe because they're afraid of what they're going to see.

2 Now I would like to talk briefly about Fannie Mae and
3 Freddie Mac. Even Mr. Battany, called by the defense,
4 testified that if he were aware of anything, anything about the
5 loan to process that negatively affected quality, that would
6 have factored into his pricing decision. That would have
7 factored into his purchase decision. Quality. You have seen
8 the evidence on the High-Speed Swim Lane. You have seen the QA
9 and QC reports. Ladies and gentlemen, it's up to you to decide
10 if poor quality loans came out of the High-Speed Swim Lane.
11 We're very confident in what the evidence shows. Mr. Battany
12 never knew anything about it at the time because no one told
13 him.

14 So the defendants try to take refuge in these other
15 numbers that Fannie and Freddie allegedly claim are industry
16 standards. Those weren't SUS numbers. Those weren't
17 investment quality representations. Remember what the fraud
18 is. It doesn't matter what Fannie and Freddie knew about other
19 loans from other lenders and other numbers. This case is about
20 what the defendants were doing, and what they were doing was
21 selling poor quality loans from the Hustle with the lie that
22 they were investment quality, and they knew it, and that's
23 fraud.

24 With respect to Rebecca Mairone, I'm not going to
25 repeat everything that was said by my colleague, Ms. Nawaday,

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Rebuttal summation - Mr. Cordaro

1 this morning. I do not have the time. The bottom line is her
2 counsel would have you believe she was essentially an innocent
3 bystander in all this. That is ridiculous. Maybe Ms. Mairone
4 didn't write an email that says: Hey, everyone, let's commit a
5 fraud.

6 But that's not what the government needs to prove its
7 case. She knew about this scheme. She participated in it.
8 She encouraged it. She was the chief operating officer of the
9 division that spawned it. She was on the steering committee.
10 She led the kick off meetings and told loan specialists not to
11 worry about the QoG hits they might get for quality mistakes,
12 and she extended the reprieve. She pushed the funding goals.
13 She ordered the QA communications be directed to her. She said
14 employees would get no QA feedback until further notice,
15 dispensed with checklists, and she was the one who had the
16 approval over the funding contests. Bottom line is she and
17 Mr. Lumsden and Mr. Kitashima had the intent, they knew about
18 the scheme, and they didn't stop it, and they didn't tell
19 anyone. And all the while on her watch, loan after loan after
20 loan after loan being sold to the GSEs, those same
21 misrepresentations, and they made money off of it, about \$165
22 million worth.

23 Finally, we get to Ed O'Donnell. He was attacked by
24 counsel today because he's the whistleblower. They want you to
25 be upset because he may receive money if the United States

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Rebuttal summation - Mr. Cordaro

1 prevails in this lawsuit. Ladies and gentlemen, I agree you
2 should be upset. You should be upset. But not for the reason
3 my adversary gave you. You should be upset that it took Ed
4 O'Donnell's blowing of the whistle to bring this brazen fraud
5 to light. It took Ed O'Donnell to bring this fraud to public
6 attention, to public scrutiny in this courtroom, a fraud that
7 Fannie and Freddie didn't know about, and a fraud that CFC's
8 own COO didn't know about. You should be upset by the secrecy
9 that ensured that no one knew about it.

10 To the extent the defense is inviting you to become
11 resentful toward Mr. O'Donnell because he may realize some
12 money from this lawsuit, I ask you to decline this invitation.
13 This is a court of law, and it's the law that provides for the
14 possibility that Mr. O'Donnell might be compensated.

15 Mr. Sullivan called his credibility into attack, as
16 did Mr. Hefter. Ladies and gentlemen, credibility
17 determination is yours. You saw all the witnesses at the
18 trial. You saw who was on the level and who was evasive. You
19 saw who answered the questions straightforwardly and who gave
20 carefully rehearsed speeches that went way beyond the question.
21 And you saw Ed O'Donnell. Did the defendants muster one single
22 lie that he told? And let's not forget about Michael Thomas
23 who also came forward and testified at this trial. Ladies and
24 gentlemen, you saw the witnesses, and we'll leave it to you to
25 decide who was telling the truth and who wasn't.

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Rebuttal summation - Mr. Cordaro

1 THE COURT: Counsel, you have about two minutes.

2 MR. CORDARO: Thank you.

3 One last thing, the Wade Comeaux email to Ms. Mairone
4 about Mr. O'Donnell, Ms. Mairone's direct report during a time
5 of uncertainty with respect to the Bank of America merger. And
6 even if you take those comments at face value, it says nothing
7 different from what Mr. O'Donnell was telling you, that
8 Ms. Mairone's leadership was under severe question, and worse
9 than that, Ms. Mairone was a participant in a fraud.

10 Members of the jury, I am almost finished. Once I sit
11 down, the Court is going to give you final instructions
12 tomorrow and then the case is yours. You will speak louder
13 with your verdict than any lawyer possibly could. We will ask
14 you to find that it was wrong for the defendants to commit
15 fraud. Don't let them fool you. Don't let them get away with
16 it. Hold them accountable for their actions and return a
17 verdict for the United States. Thank you.

18 THE COURT: Thank you very much.

19 So ladies and gentlemen, you have heard the expression
20 that it ain't over until the fat lady sings. For these
21 purposes, I'm the fat lady. And I think we have time to give
22 you my instructions of law today. I think that would be useful
23 to end the day, and then you could deliberate fresh starting
24 tomorrow. So I will ask my courtroom deputy to hand out to all
25 the jurors and the court reporter so everyone has copies of my

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1 instructions.

2 Ladies and gentlemen, we're going to read these
3 together now, and then you will have them to take with you into
4 the jury room and have them throughout your deliberations. If
5 you turn to the table of contents, you will see the
6 instructions are divided into three parts. First, there are
7 general instructions. Those are all about how you go about
8 evaluating the evidence and things like that. Then there are
9 the instructions on the specific elements of the charge in this
10 case, that's called the liability instructions, and then
11 there's some concluding instructions about how you fill out
12 your verdict form and the like.

13 So let's turn to the first instruction on page one.

14 We are now approaching the most important part of this
15 case, your deliberations. You have heard all of the evidence
16 in the case, as well as the final arguments of the lawyers for
17 the parties. Before you retire to deliberate, it is my duty to
18 instruct you as to the law that will govern your deliberations.
19 These are the final and binding instructions, which entirely
20 replace the preliminary instructions I gave you earlier. As I
21 told you at the start of this case, and as you agreed, it is
22 your duty to accept my instructions of law and apply them to
23 the facts as you determine them.

24 Regardless of any opinion that you may have as to what
25 the law may be or ought to be, it is your sworn duty to follow

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1 the law as I give it to you. Also, if any attorney or other
2 person has stated a legal principle different from any that I
3 state to you in my instructions, it is my instructions that you
4 must follow.

5 Because my instructions cover many points, I have
6 provided each of you with a copy of them not only so that you
7 can follow them as I read them to you now, but also so that you
8 can have them with you for reference throughout your
9 deliberations. In listening to them now and reviewing them
10 later, you should not single out any particular instruction as
11 alone stating the law, but you should instead consider my
12 instructions as a whole.

13 Your duty is to decide the fact issues in the case and
14 arrive, if you can, at a verdict. You, the members of the
15 jury, are the sole and exclusive judges of facts. You pass
16 upon the weight of the evidence; you determine the credibility
17 of the witnesses; you resolve such conflicts as there may be in
18 the testimony; and you draw whatever reasonable inferences you
19 decide to draw from the facts as you determine them.

20 In determining the facts, you must rely upon your own
21 recollection of the evidence. To aid your recollection, we
22 will send you all the exhibits at the start of your
23 deliberations, and if you need to review particular items of
24 testimony, we can also arrange to provide them to you in
25 transcript or readback form. But please remember that none of

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1 what the lawyers have said in their opening statements and
2 their closing arguments, in their objections, or in their
3 questions, is evidence, nor is anything I may have said
4 evidence.

5 The evidence before you consists of three things: the
6 testimony given by witnesses that was received in evidence, the
7 exhibits that were received in evidence, and the stipulations
8 and formal legal admissions of parties that were received in
9 evidence.

10 Testimony consists of the answers that were given by
11 the witnesses to the questions that were permitted either here
12 in court or in the depositions that were presented. Please
13 remember that questions, although they may provide the context
14 for answers, are not themselves evidence, only answers are
15 evidence, and you should therefore disregard any question to
16 which I sustained an objection. Also, you may not consider any
17 answer that I directed you to disregard or that I directed be
18 stricken from the record. Likewise, you may not consider
19 anything you heard about the contents of any exhibit that was
20 not received in evidence. Also, you should be careful not to
21 speculate about matters not in evidence. Rather, your focus
22 should be entirely on assessing the evidence that was
23 presented, and not on speculating about what other evidence, if
24 any, might have been obtained.

25 It is the duty of the attorney for each party of a

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1 case to object when the other side offers testimony or other
2 evidence that the attorney believes is not properly admissible
3 or asks a question the attorney believes is inappropriate.
4 Counsel have the right and duty to ask the Court to make
5 rulings of law and to request conferences at the side bar out
6 of the hearing of the jury. All such questions of law must be
7 decided by me. You should not show any prejudice against any
8 attorney or party because the attorney objected to a question
9 or to the admissibility of evidence or asked for a conference
10 out of the hearing of the jury or asked me for a ruling on the
11 law.

12 Finally, I ask you to draw no inference from my
13 rulings or from the fact that occasionally I asked questions of
14 certain witnesses. My rulings were no more than applications
15 of the law, and my questions were only intended for
16 clarification or to expedite matters. You are expressly to
17 understand that I have no opinion as to the verdict you should
18 render in this case.

19 You are to perform your duty of finding the facts
20 without bias or prejudice or sympathy as to any party, for all
21 parties are equal under the law. The fact that the plaintiff
22 is the United States of America entitles it to no more or less
23 consideration than that given any other party. Similarly, the
24 fact that some of the defendants are corporations does not mean
25 they are entitled to any greater or lesser consideration than

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1 that given any other party. All parties, including the
2 government, corporations, and individuals, stand as equals at
3 the bar justice.

4 You are to perform your final duty in an attitude of
5 complete fairness and impartiality. You are not to be swayed
6 by rhetoric or emotional appeals. It must be clear to you that
7 if you were to let prejudice or bias or sympathy interfere with
8 your thinking, there would be a risk that you would not arrive
9 at a true and just verdict. So do not be guided by anything
10 except clear thinking and calm analysis of the evidence.

11 As you know, this is a civil case in which the United
12 States, as plaintiff, is bringing a claim of fraud against
13 several defendants. The plaintiff, as the party bringing the
14 claim, has what we call the "burden of proof," which is the
15 burden of establishing as to each defendant you are considering
16 each of the essential elements of its claim by preponderance of
17 the credible evidence.

18 The "credible evidence" means such testimony,
19 exhibits, stipulations, or legal admissions that you find
20 worthy of belief. To establish an element of a claim by a
21 "preponderance" of the credible evidence means to prove that
22 the element is more likely true than not true. It does not
23 mean the greater number of witnesses, or how much time either
24 side employs in the trial. The phrase refers to the quality of
25 the evidence, its persuasiveness in convincing you of its

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1 truth.

2 In deciding whether the government has met its burden
3 of proof, you may consider both direct evidence and
4 circumstantial evidence.

5 Direct evidence is evidence that proves a disputed
6 fact directly. For example, where a witness testifies to what
7 he or she saw, heard or observed, that is called direct
8 evidence.

9 Circumstantial evidence is evidence that tends to
10 prove a disputed fact by proof of other facts. To give a
11 simple example, suppose when you came into the courthouse today
12 the sun was shining and it was a nice day, but the courtroom
13 blinds were drawn and you could not look outside. Then later,
14 as you were sitting here, someone walked in with a dripping wet
15 umbrella, and soon after someone else walked in with a dripping
16 wet raincoat. Now, on our assumed facts, you cannot look
17 outside the courtroom and you cannot see whether or not it is
18 raining, so you have no direct evidence of that fact. But on
19 the combination of the facts about the umbrella and the
20 raincoat, it would be reasonable for you to infer that it had
21 begun raining.

22 That is all there is to circumstantial evidence.
23 Using your reason and experience, you infer from established
24 facts the existence or non-existence of some other fact.
25 Please note, however, it is not a matter of speculation or

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1 guess, it is a matter of logical inference.

2 The law makes no distinction between direct and
3 circumstantial evidence. Circumstantial evidence is of no less
4 value than direct evidence, and you may consider either or
5 both, and may give them such weight as you conclude is
6 warranted.

7 It must be clear to you by now that counsel for the
8 opposing parties are asking you to draw very different
9 conclusions about various factual issues in the case. An
10 important part of that decision will involve making judgments
11 about the testimony of the witnesses you have listened to and
12 observed. In making these judgments, you should carefully
13 scrutinize all the testimony of each witness, the circumstances
14 under which each witness testified, and any other matter in
15 evidence that may help you decide the truth and importance of
16 each witness's testimony.

17 Your decision whether or not to believe a witness may
18 depend on how that witness impressed you. How did the witness
19 appear to you? Was the witness candid, frank and forthright;
20 or did the witness seem to be evasive or suspect in some way?
21 How did the way a witness testified on direct examination
22 compare with how the witness testified on cross-examination?
23 Was the witness consistent, or contradictory? Did the witness
24 appear to know what he or she was talking about? Did the
25 witness strike you as someone who was trying to report his or

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1 her knowledge accurately? These are examples of the kinds of
2 common sense questions you should ask yourselves in deciding
3 whether a witness is or is not truthful.

4 How much you choose to believe a witness may also be
5 influenced by the witness's bias. Does the witness have a
6 relationship with any of the parties that may affect how he or
7 she testified? Does the witness have some interest, incentive,
8 loyalty, or motive that might cause him or her to shade the
9 truth? Does the witness have some bias, prejudice or hostility
10 that may cause the witness to give you something other than a
11 completely accurate account of the facts he or she testified
12 to?

13 You should also consider whether the witness had an
14 opportunity to observe the facts he or she testified about, and
15 whether the witness's recollection of the facts stands up in
16 light of the other evidence in the case.

17 In other words, what you must try to do in deciding
18 credibility is to size up a person just as you would in any
19 important matter where you were trying to decide if a person is
20 truthful, straightforward and accurate in his or her
21 recollection.

22 The law permits parties to offer opinion testimony
23 from witnesses who were not involved in the underlying events
24 of the case but who, by education or experience, have expertise
25 in a specialized area of knowledge. In this case, Charles

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1 Cowan and Ira Holt were offered as such witnesses by the
2 government, while Robert Broeksmit was offered as such a
3 witness by the defendants. Specialized testimony is presented
4 to you on the theory that someone who is learned in the field
5 may be able to assist you in understanding the specialized
6 aspects of the evidence.

7 However, your role in judging credibility and
8 assessing weight applies just as much to these witnesses as to
9 other witnesses. When you consider the specialized opinions
10 that were received in evidence in this case, you may give them
11 as much or as little weight as you think they deserve. For
12 example, a specialized witness necessarily bases his or her
13 opinions, in part or in whole, on what the witness learned from
14 others, and you may conclude the weight given the witness's
15 opinions may be affected by how accurate or inaccurate that
16 underlying information is. More generally, if you find that
17 the opinions of specialized witnesses were not based on
18 sufficient data, education or experience, or if you should
19 conclude that the trustworthiness or credibility of such a
20 witness is questionable, or if the opinion of the witness is
21 outweighed in your judgment by the other evidence in the case,
22 then you may, if you wish, disregard the opinions of that
23 witness, either entirely or in part. On the other hand, if you
24 find that a specialized witness is credible, and the witness's
25 opinions are based on sufficient data, education, and

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1 experience, and that other evidence does not give you reason to
2 doubt the witness's conclusions, you may, if you wish, rely on
3 that witness's opinions and give them whatever weight you deem
4 appropriate.

5 Applying the general principles that I have just
6 discussed, you must now determine, in accordance with my
7 instructions, whether the government has established its claim
8 of fraud against any or all of the defendants by preponderance
9 of the credible evidence. This is known as establishing
10 "liability." I remind you that if liability is found as to any
11 defendant, the issue of monetary penalties, if any are to be
12 imposed, is an issue for the Court, not the jury.

13 Although there are three bank defendants here,
14 Countrywide Home Loans, Inc., Countrywide Bank, FSB, and Bank
15 of America, NA, you may treat them as one for your purposes,
16 because Bank of America, NA is the successor to Countrywide
17 Bank, FSB, which in turn took over responsibility for
18 residential loan origination from Countrywide Home Loans, Inc.
19 I shall therefore refer to them jointly as "Bank Defendants."

20 Separately, however, the government also asserts its
21 claim against an individual, Rebecca Mairone. The claim
22 against Ms. Mairone must be decided solely on the evidence that
23 relates to her. In that regard, you will recall that certain
24 evidence was received with regard to the Bank Defendants but
25 not as to Ms. Mairone, and therefore, you cannot consider such

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1 evidence as to her.

2 To establish its fraud claim against the Bank
3 Defendants, Ms. Mairone or both, the government must establish,
4 by a preponderance of the credible evidence, each of three
5 elements:

6 First, that there existed a scheme to defraud Fannie
7 Mae and/or Freddie Mac of money or property by means of false
8 or fraudulent pretenses, representations or promises;

9 Second, that the defendant you are considering
10 participated in the scheme to defraud with knowledge of its
11 fraudulent nature and with a specific intent to defraud;

12 Third, that in the execution of the scheme to defraud,
13 at least one use was made of the U.S. mails or of interstate
14 wire communications.

15 We will consider these three elements in turn.

16 As to the first element, a "scheme to defraud" is a
17 plan or design to obtain money or property by means of one or
18 more false or misleading statements of a material fact. A
19 statement is false if it is an outright lie. It is misleading
20 if it is true as far as it goes but creates a false impression
21 by omitting information necessary to correct the false
22 impression. A statement is "material" if it relates to a fact
23 that a reasonably prudent person would consider important in
24 making a decision.

25 Here, specifically, the government alleges, and the

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1 defendants deny, that one or more of the defendants devised a
2 scheme to induce Fannie Mae and/or Freddie Mac to purchase
3 mortgage loans originated through the High-Speed Swim Lane by
4 misrepresenting that the loans were of higher quality than they
5 actually were. The government further alleges that these
6 misrepresentations were material because a reasonably prudent
7 person participating in the decision of whether to purchase
8 mortgage loans at Fannie Mae or Freddie Mac would have
9 considered the true facts important in deciding whether to
10 purchase or how to price the loans.

11 Incidentally, the fact that some of these alleged
12 misrepresentations may have constituted breaches of the
13 contracts between the Bank Defendants and Fannie Mae or Freddie
14 Mac is neither here nor there, your focus should be on whether
15 there was a scheme to defraud.

16 While the government must prove that the scheme to
17 defraud Fannie Mae or Freddie Mac existed, the government is
18 not required to prove that the scheme to defraud actually
19 succeeded, that a given defendant personally benefited from the
20 scheme to defraud, that Fannie Mae or Freddie Mac actually
21 suffered any loss as a result of the scheme to defraud, or that
22 Fannie Mae or Freddie Mac were themselves free from fault.

23 As to the second element, that the defendant you are
24 considering participated at some point in the scheme knowingly
25 and with a specific intent to defraud, to act "knowingly" means

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1 to act consciously and deliberately rather than mistakenly or
2 inadvertently, but in this context it also means that the
3 defendant had knowledge that the defendant was participating in
4 a fraudulent scheme. It is not enough that the defendant you
5 are considering may have participated in a fraudulent scheme
6 carelessly, negligently, or otherwise unknowingly. Similarly,
7 to act with a specific intent to defraud requires that the
8 given defendant you are considering purposely intended to
9 deceive and harm either Fannie Mae or Freddie Mac or both by
10 seeking to sell them mortgage loans or by seeking to affect the
11 pricing of those loans through false or misleading
12 representations.

13 As to the Bank Defendants, such an intent can be
14 imputed to them if, but only if, at least one of three
15 managerial persons, Rebecca Mairone, Clifford Kitashima or Greg
16 Lumsden, participated in such a fraudulent scheme with such
17 intent. Ms. Mairone, however, can be found personally liable
18 only if she personally participated in such a fraudulent scheme
19 with such intent.

20 As to the third element, that in the execution of the
21 scheme to defraud at least one use was made of the U.S. mails
22 or of interstate wire communication, such interstate
23 communication includes, among other things, telephone calls and
24 emails that travel between two states. It is not necessary
25 that the interstate wire communication or use of the mails

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1 itself contain a fraudulent representation; rather, it is
2 sufficient if it was used to further or assist in carrying out
3 the scheme to defraud. Also, to "cause" the use of the mail or
4 interstate wire communication, it is not necessary for a given
5 defendant to be directly or personally involved in sending the
6 mail or interstate communication, as long as the communication
7 was reasonably foreseeable in the execution of the scheme to
8 defraud.

9 You will shortly retire to the jury room to begin your
10 deliberations. As soon as you get to the jury room, please
11 select one of your number as the foreperson to preside over
12 your deliberations and to serve as your spokesperson if you
13 need to communicate with the Court.

14 You will be bringing with you into the jury room a
15 copy of my instructions of law, and a verdict form on which to
16 record your verdict.

17 Let me pause there, ladies and gentlemen, and show you
18 the verdict form. It's a very simple, one-page document, and
19 it asks you just two questions, whether the Bank Defendants are
20 liable or not liable, and whether Ms. Mairone is liable or not
21 liable. You will check the appropriate box, and then whoever
22 is your foreperson will sign it, date it, seal it in this
23 envelope very cleverly marked "Verdict," and that will be
24 brought to me by the marshal, and I will not open it until you
25 come back into the courtroom, and then we will open it and I

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1 will ask each of you individually if that is your verdict. And
2 the reason we go through all those formalities is to be
3 absolutely sure we have your verdict as you decided.

4 Let's go back to the instructions.

5 In addition, we will send into the jury room all of
6 the exhibits that were admitted into evidence, along with
7 indices to the exhibits. If you want to see any of the video
8 depositions replayed, let us know and we will bring you back to
9 the courtroom for that purpose. If you want any of the other
10 testimony, that can also be provided in transcript or readback
11 form, but please remember that it is not always easy to locate
12 what you might want, so be as specific as you possibly can in
13 requesting portions of testimony.

14 Any of your questions, in fact any communication with
15 the Court, should be made to me in writing signed by your
16 foreperson and given to the marshal who will be available
17 outside the jury room throughout your deliberations. After
18 consulting with counsel, I will respond to any question or
19 request you have as promptly as possible, either in writing or
20 by having you return to the courtroom so that I can speak with
21 you in person.

22 You should not, however, tell me or anyone else how
23 the jury stands on any issue until you have reached your
24 verdict and recorded it on your verdict form.

25 Each of you must decide the case for yourself after

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1 consideration with your fellow jurors of the evidence in the
2 case, and your verdict must be unanimous. In deliberating,
3 bear in mind that while each juror is entitled to his or her
4 opinion, each should exchange views with his or her fellow
5 jurors. That is the very purpose of jury deliberation, to
6 discuss and consider the evidence, to listen to the arguments
7 of fellow jurors, to present your individual views, to consult
8 with one another, and to reach a verdict based solely and
9 wholly on the evidence.

10 If, after carefully considering all the evidence and
11 the arguments of your fellow jurors, you entertain a
12 conscientious view that differs from the others, you are not to
13 yield your view simply because you are outnumbered. On the
14 other hand, you should not hesitate to change or modify an
15 earlier opinion which, after discussion with your fellow
16 jurors, now appears to you to be erroneous.

17 In short, your verdict must reflect your individual
18 views and must also be unanimous.

19 This completes my instructions of law.

20 So ladies and gentlemen, we're now going to swear the
21 marshal who will be safeguarding you throughout your
22 deliberations. You will then return to the jury room, and the
23 only thing you need to do today is select your foreperson. And
24 you can leave, go home, and when you come back at 9:30 tomorrow
25 morning to begin your deliberations, it will be up to your

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Charge

1 foreperson to make sure that all ten of you are in the jury
2 room before you start your deliberations. That's the
3 foreperson's job. We'll make sure that all the exhibits and
4 the indices are waiting there for you.

5 So let's swear in the marshal.

6 (Marshal sworn)

7 DEPUTY CLERK: Jurors, please follow the marshal.

8 (Jury retired, time noted, 4:55 p.m.)

9 (Jury not present)

10 THE COURT: I will note for the record that any
11 objections that were previously made to my charge are deemed to
12 have been remade at this time so that they're fully preserved
13 for appeal.

14 Anything else that counsel needs to raise with the
15 Court?

16 Let me tell you my practices with respect to jury
17 deliberation. I want at all times beginning at 9:30 at least
18 one lawyer from each party who is authorized to respond to any
19 jury note present on this floor. You can be in the courtroom
20 or you can be out in the hallway, but you cannot be anywhere
21 else. That's so that when we get a note we can respond
22 immediately, we don't have to go searching for you folks. The
23 exception will be between 1:00 and 2:00 p.m. when you are
24 excused for lunch.

25 I will also give my law clerk to give to my courtroom

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1 deputy a copy of my charge to be docketed as Court Exhibit
2 Number 1.

3 And the only other thing I want to say is to me it is
4 always thrilling to hear such fine summations as I heard in
5 this case. This is what the legal process is all about:
6 Tough-minded but fair-minded professionals having worked hard
7 to present their cases bring it all together in a way that I
8 thought on the part of all lawyers was crystal clear and
9 immensely helpful to the jury in reaching their determination.
10 So you have the thanks of the Court for those very excellent
11 closing arguments.

12 We'll see you tomorrow at 9:30.

13 (Adjourned to October 23, 2013 at 9:30 a.m.)
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